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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL., APPELLANTS,

vs.

SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 10, 1931

(36,382, 36,383, 36,384)

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

VOL. I

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[fol. a] [Caption omitted]

[fol. 1]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Equity. No. 37623

UNITED STATES OF AMERICA, Petitioner,

v.

SWIFT & COMPANY, ARMOUR AND COMPANY, MORRIS & COMPANY, Wilson & Co., Inc., and The Cudahy Packing Company et al., Defendants

PETITION—Filed February 27, 1920

To the honorable Judges of the Supreme Court of the District of Columbia, sitting in equity:

The United States of America, by John E. Laskey, its attorney for said district, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, they being severally duly authorized to act in said capacities by proper lawful authority, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Swift and Company, a corporation organized under the laws of the State of Illinois; Armour and Company, a corporation organized under the laws of the State of Illinois; Morris & Company, a corporation organized under the laws of the State of Maine; Wilson & Co. (Inc.), a corporation organized under the laws of the State of New York; the Cudahy Packing Company, a corporation organized under the laws of the State of Maine (these corporations are hereinafter referred to as the parent companies), and the following-named corporations and individuals, to wit:

Armour Defendants

Corporations:

Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour &

Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing and Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and [fol. 2] existing under the laws of the State of Illinois; The New York Butchers Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York.

Swift Defendants

Corporations:

Swift & Company, a corporation organized and existing under the laws of the State of West Virginia; Swift & Company (Inc.), a corporation organized and existing under the laws of the State of Kentucky; Swift & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Swift & Company, a corporation organized and existing under the laws of the State of Maine; Swift Beef Company, a corporation organized and existing under the laws of the State of Maine; United Dressed Beef Co. of New York, a corporation organized and existing under the laws of the State of New York; J. J. Harrington & Company (Inc.), a corporation organized and existing under the laws of the State of New York; Bimbler Company, a corporation organized and existing under the laws of the State of New Jersey; The G. H. Hammond Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Packing Company, a corporation organized and existing under the laws of the State of Kentucky; Plankinton Packing Company, a corporation organized and existing under the laws of the State of Wisconsin; Sturtevant & Haley Beef & Supply Company, a corporation organized and existing under

the laws of the State of Massachusetts; E. K. Pond Packing Company, a corporation organized and existing under the laws of the State of Illinois; Van Wagenen & Shickhaus Company, a corporation organized and existing under the laws of the State of New Jersey; Western Packing Company, a corporation organized and existing under the laws of the State of Colorado; Hammond Beef Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Meat Company, a corporation organized and existing under the laws of the State of California; A. Canfield Commission Company, a corporation organized and existing under the laws of the State of New Jersey; H. C. Derby Company, a corporation organized and existing under the laws of the State of New York; Metropolitan Hotel Supply Company, a corporation organized and existing under the laws of the State of Maine; Vermont Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; The Hotchkiss Beef Co., a corporation organized and existing under the laws of the State of New York; F. & C. Crittenden Company, a corporation organized and existing under the laws of the State of New York; George Nye Company, a corporation organized and existing under the laws of the State of Massachusetts; H. L. Handy Company, a corporation organized and existing under the laws of the State of Massachusetts; Swift Coats Company, a corporation organized and existing under the laws of the State of Massachusetts; New England Dressed Meat & Wool Company, a [fol. 3] corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company Incorporated, a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Com-

pany, a corporation organized and existing under the laws of the State of Maine.

Morris Defendants

Corporations:

Morris Packing Company, a corporation organized and existing under the laws of the State of Maine; Morris & Company, a corporation organized and existing under the laws of the State of New Jersey; Morris & Company, a corporation organized and existing under the laws of the State of Louisiana; Morris & Company, of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania; Joseph Stern & Sons (Inc.), a corporation organized and existing under the laws of the State of New York; Brooklyn Beef & Provision Co., a corporation organized and existing under the laws of the State of New York; Condit Beef & Provision Company, a corporation organized and existing under the laws of the State of New Jersey; Corwin Wilde Company, a corporation organized and existing under the laws of the State of Massachusetts; Donnelly & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; National Hotel Supply Company, a corporation organized and existing under the laws of the State of Illinois; Chamberlain & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; J. M. Wilson Company, a corporation organized and existing under the laws of the State of Massachusetts; Middletown Beef & Provision Company, a corporation organized and existing under the laws of the State of Massachusetts; Glenn & Anderson Co., a corporation organized and existing under the laws of the State of Illinois.

Wilson Defendants

Corporation:

Wilson & Co., a corporation organized and existing under the laws of the State of New Jersey; Wilson & Co. (Inc.), a corporation organized and existing under the laws of the State of Nevada; Wilson & Co. (Inc.), of Louisiana, a corporation organized and existing under the laws of the State of Louisiana; Wilson & Co. (Inc.), of Oklahoma, a corpo-

ration organized and existing under the laws of the State of Oklahoma; South Dakota Provision Co., a corporation organized and existing under the laws of the State of South [fol. 4] Dakota; Gotham Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Standard Beef Co., a corporation organized and existing under the laws of the State of New York; Stiefel-O'Mara Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Drexel Packing Co., a corporation organized and existing under the laws of the State of Illinois; Albert Lea Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Mississippi Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Morton-Gregson Co., a corporation organized and existing under the laws of the State of Delaware; Paul O. Reymann Co., a corporation organized and existing under the laws of the State of West Virginia; Standard Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Central Products Corporation, a corporation organized and existing under the laws of the State of Virginia.

Cudahy Defendants

Corporations:

Cudahy Packing Company of Nebraska, a corporation organized and existing under the laws of the State of Nebraska; Cudahy Packing Company of Alabama, a corporation organized and existing under the laws of the State of Alabama; Cudahy Packing Company of Louisiana (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Nagle Packing Company, a corporation organized and existing under the laws of the State of New Jersey.

Other Defendants

Corporations:

Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California;

Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada.

These corporations are hereinafter referred to as the subsidiaries defendants.

Armour Defendants

Individuals:

J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, George B. Robbins.

Swift Defendants

Individuals:

Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

[fol. 5] Morris Defendants

Individuals:

Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, Harry A. Timmins.

Wilson Defendants

Individuals:

Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

Cudahy Defendants

Individuals:

Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew A. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

Other Defendants

Individuals:

Fred L. Washburn.

These defendants are hereinafter referred to as the individual defendants.

Court's Jurisdiction

The parent companies, either directly or through subsidiaries, are engaged in interstate and foreign commerce in (a) the purchase and slaughter of live stock, (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter, (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal, (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used, (e) the manufacture, canning, or otherwise preparing for the market, sale, and distribution of food supplies other than meats (these are hereafter referred to as substitutes for meat foods, (f) the manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities).

By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and [fol. 6] welfare of the people of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the act of Congress dated July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," said act being commonly known as the Sherman antitrust law, and further conferred and contained in act amendatory thereof and supplemental or additional thereto, and particularly the act known as the Clayton Antitrust Act dated October 15, 1914, being entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition.

Object to be Attained

This petition is filed and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of live stock, meat products, and substitute foods, and to prevent the continuance of unlawful monopolies by the defendants, in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the substitute foods, and certain of the unrelated commodities; to limit in the manner hereinafter set forth, the interests which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons.

The Nature of the Business and Method by Which it is Conducted

The principal business of each of the parent companies, conducted by each company directly or through its sub-

sidiaries, is the slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses, and the distribution of the dressed meat in interstate commerce through various means by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers.

[fol. 7] Each of these concerns is the successor or natural outgrowth of concerns of many years' standing. In their inception these concerns devoted themselves exclusively to the slaughter of live stock, the dressing of the carcass, and the sale of the dressed meat to retail butchers or consumers. The invention of what are known as route cars and refrigerator cars, by means of which the dressed meats might be hauled long distances and preserved for a considerable length of time, free from decay, enabled the parent companies to widely extend their market so as to make it nationwide, and further enabled them to slaughter the live stock near the source of supply.

As the demand for live stock grew in volume the institution known as the stockyard was evolved.

The Stockyards

The stockyard was and is in theory a public market place to which all who wish to either buy or sell may have free access and right to trade. The stockyards afford to the cattle raiser the opportunity to dispose of his livestock for an immediate cash price. Contiguous to such stockyards commission men, dealing exclusively in the sale of live stock, locate themselves. These commission men attend to the care of the live stock upon its arrival, effect the sale of the stock so consigned, attend to its weighing, collect the proceeds of the sale and remit to the consignor after deducting customary commission.

Stockyards render certain services to the shipper, for which they make charge, to wit, yardage (furnishing the facilities and performing the services of placing and keeping the animals in pens and watering them), feeding, and selling food, weighing, dipping, bedding cars, and often loading and reloading.

The yardage charges are ordinarily based upon an arbitrary price per head for each kind of stock, but in some instances they are based upon the hundredweight. The

charge for feed is fixed by the stockyards and includes the services rendered in feeding. The amount of the charges made or to be made for the other items of services or materials furnished is also fixed by the stockyards or those who are in control of the yards.

In connection with each stockyard there is need for certain facilities and conveniences for the benefit of either the shipper or the buyer of the live stock. The stockyards, by reason of its dominating position, control these conveniences and facilities.

Conveniences and Facilities Controlled by Stockyards

Packing-house Sites:

In furtherance of the tendency to centralize the market, it became of advantage to establish the slaughterhouses and packing plants either in, or immediately adjacent to, the stockyards. The stockyard companies generally own or control all the available land within the yards, and at most of the important yards the land surrounding the yards [fol. 8] is owned by companies controlled by the stockyard company or its principal stockholders. New packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from these land-development companies. The owners of stockyard companies are, therefore, in a position to determine what packing companies and how many plants shall be established at the yards.

Sites for Stockyard Banks and Cattle Loan Companies:

The cattle raiser is in many instances dependent upon banks or loan companies to finance him in the rearing of his live stock and until such times as the stock shall have been sold. From the nature of the business it is a great advantage to these banks to locate in or near stockyards. It, therefore, lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards.

Rendering plants:

While in transit or after reaching the yards, live stock often die either from disease or accident. The stockyard

companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards.

Commission Men's Office Space:

The commission men and traders at the stockyards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are allotted pens, and inasmuch as it — of great advantage to commission men to be able to dispose of his customer's live stock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.

Terminal Railways:

The centralization of the market at one site and the resultant growth of the packing houses in or about the market, of necessity, require terminal railways to facilitate the switching of cars from the railroads to the stockyards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stockyard railways are usually owned by the stockyard companies or by those in control of the stockyard companies. Control of these railways carries with it the power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate [fol. 9] against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines.

Market Papers and Journals:

In addition to having a free market in which to dispose of his live stock, the cattle raiser requires full, accurate, and unbiased reports of the demand for live stock, the

prices prevailing, and the character and kind of stock required, together with such other information as to market or trade conditions. The cattle raiser, of necessity, is located at places remote from the market, he rarely accompanies his shipment to the market, and by reason of the cost of shipment and of feeding in transit and while being held for sale it is imperative that he dispose of his stock when once he has shipped. For his guidance the cattle raiser relies largely upon the trade papers and journals. Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.

It is, therefore, evident that control of the stockyards and of the other facilities apertaining to the stockyards carries with it:

(a) A profit derived from the meat industry levied upon it and collected before the animal is slaughtered, all of which profit, however, evidences itself in the utlimate cost which the consuming public must pay for the dressed meat.

(b) A potential means of favoritism in dealing with commission men and of influence over them, a power to grant monopolies—carrying with it consequent profit—to banks, cattle-loan institutions, rendering plants, to concerns supplying food for live stock, and to others.

(c) A means to prevent the establishment of new packing plants and to hamper the growth of those in existence.

(d) A means to prevent the development and limit the number of new markets and to centralize and restrict business to the stockyards so controlled.

(e) Peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, and the dissemination of information to the producer.

Branch Houses, Route Cars, Autotrucks, and Cold-Storage Warehouses

Branch Houses:

The primary means adopted by the parent companies in the distribution of their dressed meats are the branch houses. These houses are storage stations located in the cities and larger towns. They are equipped with facilities

for cooling and preserving the meats, and each is under the charge of a branch house manager, under whose direction the branch house sales organization sells to retail and wholesale butchers, to purveyors, hotels, restaurants, and other similar large consumers. The parent companies [fol. 10] maintain 1,120 branch houses in various large towns and cities throughout the United States, as against which all other interstate slaughterers, independent of the parent companies, maintain only 139.

Route Cars:

The route cars supplement the branch houses. They serve the purpose of reaching these small communities where the trade is not sufficiently large to justify investment in a branch house. These route cars travel over what are known as car routes. Orders are taken in advance and the route cars reaching specified towns on specified dates serve the requirements of the smaller communities. The starting point for the route cars is usually the packing plant, though in some instances the route car starts from a branch house. The parent companies operated as of June, 1918, 1,297 route cars, which constituted 90 per cent of the total number operated in the packing industry. Said route cars reach and serve dealers in 37,176 towns, and operate in 37 of the States of the United States.

Autotrucks:

This is a further development of the route-car plan. It had its origin in the development of the motor truck, and because of its freedom from railway limitations and schedules it is enabled to reach a wider radius and smaller towns than is the route car.

The autotrucks have been adopted primarily by Armour & Co. as a supplement to the car routes. These autotrucks reach and serve a total of 20,836 towns throughout the United States.

Cold-storage Warehouses:

The cold-storage warehouses were in the beginning adopted as an instrumentality for enabling the parent companies to extend the volume of their slaughter of live stock and sale of dressed meat. In the first instance they were

used for chilling meat in connection with the packing business. Then they were constructed in connection with the branch houses, so that they might be used for storing and holding the finished meats until they were sold. Later they were either built or acquired in the large eastern seaboard cities for long-time storage and for storing for export. As will be more fully set forth hereafter in discussing the control of substitute foods, these storage warehouses were later employed to store nonmeat-food products. Later control was acquired over public storage warehouses where surplus space was leased or let to others. Later it will be pointed out how control of this public-storage warehouse was employed to aid in control of the price of meats and substitute foods.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

The parent companies and their controlling heads, appreciating the advantages which were to be gained by [fol. 11] controlling the stockyards and the facilities pertaining thereto, the terminal railways and market papers and trade journals, and realizing that the requisition of such instrumentalities might thus enable them to obtain a primary profit not only out of the sale of live stock purchased and slaughtered by them but also on that purchased and slaughtered by their competitors, and realizing the opportunities thereby to repress and discourage the development of independent packers and slaughter houses and to control the shipments of meat to the various markets, set about the acquisition of the various stockyards and the appurtenances and privileges incidental thereto. This in many instances was done by a concert of action and pursuant to a common understanding. In most instances the acquisition of control of the aforesaid stockyards by any one or more of the parent companies was acquiesced in by the others and in all instances the ownership or control of stockyards by other packers or by any one in fact other than the parent companies or one of their members or their controlling heads, was discouraged and opposed.

In pursuance of a common purpose, plan, and design, outside investors and independent packers have gradually been forced out as dominating factors both in the ownership and management of most of the important stockyards

and have been replaced by the parent companies or their representatives. This acquisition has been accomplished by various methods: In the earlier years by exacting stock donations under threats of moving away their packing plants, later by cash subscriptions for stock, generally below par, and in other instances by voluntary reorganization of stockyard companies in order that the parent companies and their controlling heads might gain a controlling or dominating power in the yards and thus be induced to continue to maintain their packing plants thereat. By these various means the parent companies directly, or indirectly through their controlling heads, have been enabled to obtain control of substantially all of the large stockyards of the country. They now have, either jointly or separately, a controlling interest in 22 of the 50 market stockyards in the United States.

The parent companies have availed themselves of the control so acquired by them in the stockyards aforesaid to elect the officers and directors of said stockyards and to dominate and control the policies thereof. They have granted exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities and the location of cattle banks and cattle loan companies, to concerns and corporations in which they or some of them or individuals who are stockholders in said parent companies, hold the controlling stock, and they have otherwise, acting in concert, employed the powers and privileges more specifically set forth and discussed under the heading "Nature of the business and method by which it is conducted"; all of which has been done with the intent and purpose of, and has had the effect of discouraging and suppressing the establishment of independent packing establishments and dwarfing the growth of such independent packing companies as might then be in existence, and to enable said parent companies, their subsidiaries or the [fol. 12] individuals who own and control the parent companies and their subsidiaries to obtain vast profits from the management of the stockyard and the granting of the privileges appurtenant thereto, which profits are realized not only upon the live stock purchased by the packers but upon that purchased by their competitors. These methods have thus enabled them to enjoy and realize such profits without the same appearing or being disclosed in the profits of the

parent companies; they have also furthered the attempt of said parent companies to monopolize the meat industry of the country and to artificially control the ultimate price which the consumer pays for meat and meat products.

Contracts in Restraint of Trade

The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.

The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, though applied primarily in the purchase of live stock, had as its ultimate object the elimination of competition, not only in the purchase of live stock but also in the sale of dressed meats. It is a well-established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.

The simplest way to limit the volume of dressed meat is to limit the purchase of live stock.

Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.

As a means of perfecting this arrangement, divers percentages varying at different stockyards were agreed upon, and understandings were had that certain of the parent companies should buy in certain yards or should refrain from buying in certain stockyards. In order to prevent such plans from being disarranged by outsiders agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.

Means were adopted and by virtue of the parent companies' control over many of the stockyards were easily executed by which sales to outsiders or independents were controlled by the parent companies.

Control over the stockyards, the stockyards loan institutions, the terminal railways, and other privileges and perquisites has discouraged any opposition by either commission men or independent packers.

[fol. 13] Control of Substitute Foods

Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table.

Extent to Which the Monopolistic Attempts Have Been Successful

Financial Growth, Present Net Worth, and Volume of Business:

In the 15 years from 1904 to 1919, Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co.,

according to their financial reports, grew from a net worth of approximately $92,000,000 to a net worth of approximately $479,000,000, and in this same period they paid in cash dividends $105,000,000. Only $89,000,000 of their increased worth represented new capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of $3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been [fol. 14] taken of the many corporations which are owned or controlled by the same family or financial interest as own or control the parent companies.

In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of other packing houses and slaughtering companies or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances.

Number of Controlled Companies

The parent companies or the individual defendants and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest is some 762. In the years that are past the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful those concerns, so acquired or organized, have ben dissolved and their businesses have been

merged into that of the parent companies or that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation except in those instances where their names have been continued as trade names. The total of 762 above stated, therefore, falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of the general scheme and plan of action already explained.

Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:

It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various industries. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked, in a matter of a few years the control will be complete.

In 1916 the business of Armour & Company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies) and grape juice amounted to $6,396,036.73; in 1918, two years later, the same company's volume of business in these same items was $39,820,000, over a sixfold increase. While part of this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors. Of the corporations which have been acquired by the parent companies in recent years, a large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities [fol. 15] of the parent organizations, themselves, in these lines indicates a well-defined purpose on their part to secure control of the market for meat-substitute foods. In addition to the companies whose control has been acquired by outright purchase, the parent companies have, in a large number of instances, contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The outputs of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of

their products as completely as though they themselves owned the producing companies.

Individual Defendants

The individual defendants are either officers, directors, agents, or employees of the parent companies or their subsidiaries or large stockholders of parent companies and subsidiaries who are otherwise affiliated in commercial operations with the active heads of the parent companies. These individual defendants are in their individual capacity financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with the stockyards. They, or some of them, control the corporations dealing in the substitute foods and the unrelated commodities. In many instances, in addition to their individual holdings, they hold stock in these corporations for the benefit of the parent companies. The control by these individuals of the facilities or instrumentalities of the meat business and their interest in concerns dealing in the substitute foods and the unrelated commodities enable the parent companies to carry out the purpose of the combinations hereinabove described, and are now and will continue to be a sinister and ever-present means of furthering the attempt to monopolize and perfect it to such a degree that the parent companies or their subsidiaries will have complete control not only of meat products but of all substitute foods consumed in the United States.

Subsidiaries Defendants

These comprise many, but not all, of the subsidiaries owned or controlled by the parent companies. Only these subsidiaries, which are substantially 100 per cent parent-company owned and which are engaged either in the slaughtering, packing, or selling of meats, have been made parties defendants. It is the plan and scheme of this petition and the prayer for relief that the corporations which in themselves own the facilities more specifically described above or deal in the substitute foods and unrelated commodities shall not be made parties defendants in the first instance or until it appears that they are necessary parties defendants, but that the parent companies, the subsidiaries defendants, and

the individuals should be compelled to divest themselves of [fol. 16] all interest in or connection with the subsidiaries owning the facilities or dealing in the substitute foods or commodities referred to.

Prayer

Wherefore, petitioner prays:

I. That the defendants, and each of them, be forever enjoined from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of live stock, or the purchase, sale, or distribution of dressed meats or other products or commodities now handled by them, or any of them, among the several States or foreign nations, which contract, combination, or conspiracy may now exist between them, or any two or more of them, or from doing any act pursuant to or in furtherance of any such contract, combination, or conspiracy, and that they be enjoined from entering into any other or further contract, combination, or conspiracy, either among themselves or among any two or more of them, or with any other person or persons whatsoever, in restraint of trade or commerce between the several States and foreign nations.

II. That they, and each of them, be enjoined and forever restrained from monopolizing, or attempting to monopolize, or conspiring to monopolize, the trade or commerce between the several States or with foreign States in the purchase, sale, or distribution of live stock or the commodities aforesaid.

III. That the defendants, and each of them, be required to divest themselves to such extent and upon such terms and conditions as the court may deem proper from such interest in or control over public cold-storage warehouse, retail meat markets, stockyards, terminal railways, market or trade journals, or such other facilities as are connected with or are appurtenances to the stockyards, in such instances as the court may deem that such instrumentalties constitute a means of facilitating the formation or continuance of monopolies in the purchase of live stock or the sale of the commodities aforesaid.

IV. That the corporation defendants, and each of them, be perpetually enjoined from permitting their refrigerator cars, route cars, auto trucks, or branch houses, or other distributive facilities, to be used for the distribution or sale of commodities of the character and kind hereinbefore generally described as substitute foods and unrelated commodities in such instances and to such extent as the court may deem necessary for the purpose of preventing the aforesaid defendants from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal.

V. That the defendants and each of them be required to divest themselves of all stockholdings or other interest in any corporation, partnership, or association now dealing in any of the food substitutes or unrelated commodities hereinbefore more specifically described, and that wherever [fol. 17] said defendants own, operate, or control a department buying, selling, or otherwise distributing substitute foods, unrelated commodities, or any of them, that they be required to discontinue the aforesaid department, and that the defendants and each of them be restrained and perpetually enjoined from hereafter acquiring any stockholdings or interests of the character hereinbefore described, in any corporation dealing exclusively or partially in the said substitute foods or commodities hereinbefore referred to, or from themselves engaging in such business, either directly or through a department.

VI. That the defendants and each and every one of them be perpetually enjoined from indulging in any unlawful practice or committing any act of unfair competition or any other act with the purpose of or which may have the effect of unduly restraining trade and commerce, or which may be indulged in or done with the purpose or effect of monopolizing said trade or commerce in the commodities now manufactured, bought, sold, or otherwise dealt in by the defendants or any one of them.

VII. That your petitioner be granted such other and further relief as the nature of the case may require and the court may deem just and proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant writs of subpœna directed to each and every one of said defendants, commanding them and each of them to appear herein and answer, but not under oath (answers under oath being hereby expressly waived), the allegations contained in the foregoing petition, and to abide by and perform such order or decree as the court may make in the premises, and upon final hearing hereof to permanently enjoin each of the defendants as hereinbefore prayed.

Respectfully submitted.

John E. Laskey, United States Attorney. A. Mitchell Palmer, Attorney General. Isidor J. Kresel, John H. Atwood, Joseph Sapinsky, Special Assistants to the Attorney General.

[fol. 18] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF SWIFT & COMPANY AND OTHERS—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations	Organized under laws of—
Swift & Company	Illinois.
Swift & Company	West Virginia.
Swift & Company (Inc.)	Kentucky.
Swift & Company (Ltd.)	Louisiana.
Swift & Company	Maine.
Swift Beef Company	Maine.
United Dressed Beef Co. of New York	New York.
J. J. Harrington & Company (Inc.)	New York.
Bimbler Company	New Jersey.
The G. H. Hammond Company	Michigan.
Omaha Packing Company	Kentucky.
Plankinton Packing Company	Wisconsin.
Sturtevant & Haley Beef & Supply Company	Massachusetts.

Corporations	Organized under laws of—
E. K. Pond Packing Company	Illinois.
Van Wagenen & Shickhaus Company	New Jersey.
Hammond Beef Company	Michigan.
Omaha Meat Company	California.
A. Canfield Commission Company	New Jersey.
H. C. Derby Company	New York.
Metropolitan Hotel Supply Company	Maine.
Vermont Supply Company	Massachusetts.
The Hotchkiss Beef Co.	New York.
Western Packing Company	Colorado.

Individuals

Louis F. Swift.	Laurence A. Carton.
Edward F. Swift.	Frank S. Hayward.
Charles H. Swift.	Charles A. Peacock.
Gustavus F. Swift, Jr.	Wilfred W. Sherman.
Harold H. Swift.	Wellington Leavitt.
Alden B. Swift.	John M. Chaplin.
George H. Swift.	William B. Traynor.

[fol. 19] These defendants now and at all times hereafter saving unto themselves all and all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

"Court's Jurisdiction"

These defendants admit that Swift & Company referred to in said bill of complaint as a parent company, either directly or through subsidiaries is engaged in—

(a) The purchase and slaughter of live stock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animals.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used.

(e) The manufacture, canning or otherwise preparing for the market, sale and distribution of certain food supplies other than meats.

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats or the competitors of the parent companies.

But these defendants allege that the business and transactions in which said Swift & Company is alleged in the bill of complaint to be engaged are not interstate or foreign commerce, and no facts are alleged in the bill of complaint which constitute interstate or foreign commerce.

These defendants deny that the various other articles described in said subdivision "(f)" as manufactured and sold by said Swift & Company, either directly or through subsidiaries, are articles or commodities unrelated to the business of said Swift & Company as is impliedly charged in the bill of complaint.

These defendants deny that they or any of them have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that Swift & Company, one of the "parent companies," referred to in the bill of complaint, and its subsidiaries together with the other so-called [fol. 20] "parent companies" and their subsidiaries, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly

and control over divers and sundry products and commodities, referred to in the bill of complaint, as charged therein.

These defendants deny that said Swift & Company and its subsidiaries, together with the other so-called "parent companies" and their subsidiaries, or otherwise, are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint, as charged therein; and these defendants deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, as charged in the bill of complaint.

"Object to be Attained".

These defendants deny that they or any of them have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that said Swift & Company and its subsidiaries, and as they are informed and believe, and therefore allege, that each parent company and its subsidiaries described in said bill of complaint are in actual and keen competition with each and every other parent company and its subsidiaries, so that the extent to which these defendants may dominate, control, or monopolize the food supply of the Nation depends upon the volume of business done by said Swift & Company and its subsidiaries compared to the total volume of business done by all engaged in supplying the food supply of the Nation.

These defendants allege that said Swift & Company and its subsidiaries handle only approximately 12 per cent of the total meat supply of the country and only approximately 22 per cent of the output of meats and meat products of the numerous plants engaged in the meat-packing business which ship meat in interstate commerce, and allege that said Swift & Company and its subsidiaries likewise handle only approximately 6 per cent of the total quantity

of butter, eggs, and poultry which enters trade channels in the United States; and only approximately 15 per cent of all cheese sold in the United States; and only approximately 20 per cent of the total production of oleomargarine in the United States; and less than 15 per cent of the total quantity of lard substitutes sold in the United States; and less than 5 per cent of the total quantity of canned fruits and canned vegetables sold in the United States; and less than 15 per cent of the output of hides in the United States; [fol. 21] and these defendants allege that the volume of business thus handled by said Swift & Company and its subsidiaries is too small a part of the total volume of business in said respective lines of business to even suggest the possibility that Swift & Company could dominate, control, or monopolize any or all of such lines of business, or could control or manipulate the prices charged and received by it in the sale of commodities in said business.

These defendants allege that even if the five parent companies mentioned in the bill of complaint and their respective subsidiaries acted in agreement or combination (which these defendants deny), the business of said five parent companies and their subsidiaries would not and could not dominate, control, or monopolize the food supplies of the Nation, but, on the contrary, would be less than 40 per cent of the meat supply of the United States; and less than 15 to 20 per cent of the quantity of butter, eggs, and poultry which enters trade channels in the United States; and only about 3 per cent of the total sale of grocery products at wholesale in the United States; and not more than 45 per cent of the output of hides in the United States; and not more than 16 to 17 per cent of the cattle, calf, and sheep leather output of the United States.

These defendants allege that even if the five parent companies in said bill described acted together by agreement or combination (which these defendants deny), said companies so acting together would not and could not dominate, control, and monopolize said respective businesses or the food supplies of the Nation, nor could said five parent companies control or manipulate the prices of commodities sold by them respectively; and therefore these defendants allege that it is obvious that there is and can be no danger whatsoever that "within the compass of a few years" the packers will "control the quantity and price of each article of food

found on the American table," as charged in the bill of complaint.

These defendants allege that if any one or all of said defendants, dominated, controlled, or monopolized a very great proportion of the food supplies of the Nation, such domination, control, or monopoly would necessarily appear in the profits made by such defendant or defendants upon the sale of their products. These defendants deny that such domination, control, or monopoly exists, and allege that said Swift & Co. is not a party to any such domination, control, or monopoly, and alleges that the profit of said Swift & Co. from all sources for the fiscal year 1919 was only 1 1/6 cents on each dollar of sales and averaged only approximately one-fourth of 1 cent on each pound of all products of every description sold, and that such profit is so small as to have practically no effect on prices charged by Swift & Co. and its subsidiaries for their products; and, further, that said 1 1/6 cents on each dollar of sales includes the profits received by said Swift & Co. and by all its subsidiaries upon all products sold by them, including meat products and by-products of every description. These defendants allege that neither these defendants nor any of them would be satisfied with such a nominal profit upon their business if they had the power through domination, control, or monopolization of trade to obtain a reasonable profit upon the sale of their products.

[fol. 22] "The Nature of the Business and Method by Which It is Conducted"

These defendants admit that the principal business of said Swift & Company, directly or through its subsidiaries, is the slaughter of live stock, the dressing of the carcasses thereof, and the sale of the dressed meat and of the by-products resulting from the slaughter of live stock; but these defendants deny that said business as described in the bill of complaint is interstate commerce.

These defendants admit that the invention of the refrigerator car made it possible to slaughter live stock and prepare the fresh meat thereof for market at or near the great sources of supply in the West and to preserve the meat in transit to the consuming public in the East, and these defendants allege that great losses from shrinkage in

weight of, injury to, and death of the live stock in transit were thereby saved, which losses had theretofore been an incident in the shipment of the live animals; and further allege that the invention of the refrigerator car, by preventing such losses and by preventing other losses, such as bruises to the hides of animals shipped long distances, which materially reduce the value of such hides when cured, revolutionized the live-stock and fresh meat business of the country, developed the live-stock industry, and cheapened the cost of meats and animal by-products to the consumer and was, therefore, of incalculable benefit to the public.

These defendants deny that they have any exclusive right to or monopoly over refrigerator cars; which fact may be inferred from the allegations in the bill of complaint. These defendants allege that any and all who desire to do so may secure, own, and furnish such refrigerator cars to the railroads for the purpose of carrying their products under the same terms, conditions, regulations, and tariffs of the railroads that the railroads require of these defendants.

"The Stockyards"

These defendants admit that stockyards are public market places, to which all who wish may have free access and right to trade. These defendants allege that the stockyard companies do not buy or sell live stock at the stockyards or interfere with or affect in any way the trading between the live-stock raisers or their agents, on the one hand, and the buyers on the other.

These defendants allege that the defendant corporations or some of them, by purchasing live stock shipped to the stockyards adjacent to their respective packing plants, have afforded and do afford the opportunity to the cattle raiser to dispose of his live stock for an immediate cash price at any and all times, in times of glut as well as in times of scarcity, and said defendants have by this means established and developed such stockyards and encouraged the growing of live stock.

These defendants allege that they have likewise improved and made attractive to live-stock raisers the stockyards in which they have been interested, by promptly furnishing at [fol. 23] great expense all facilities and conveniences neces-

sary or suitable to the receiving, caring for, and handling of live stock, and have thus developed and encouraged the growing of live stock.

"Conveniences and Facilities Controlled by Stockyards"

"Packing-house Sites:"

These defendants admit that as to all stockyards in which they are interested the stockyard companies generally own all the available land within the yards. These defendants deny that at any stockyards in which they are interested all the land surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. These defendants allege that in many instances stockyard companies or companies controlled by the stockyard company or its principal stockholders have bought some land adjacent to the yards for the purpose of providing for the growth of the yards and for the establishment of additional packing plants at said yards whenever such opportunity offered. These defendants deny that new packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from the companies owned or controlled by said stockyard companies or their principal stockholders; and these defendants deny that stockyard companies, as a rule, are in a position to determine what packing companies and how many plants shall be established at the various stockyards as charged in the bill of complaint.

These defendants allege that it is necessary, in order to develop a market at stockyards and to encourage the owners of live stock to ship their live stock to the stockyards, that there be a number of packing companies or other purchasers ready to buy live stock presented for sale at said stockyards and ready to buy said live stock at all times, so that there will always be a steady competitive and attractive market to which live-stock producers may ship their live stock with the assurance that they will find a fair and prompt market therefor. These defendants allege that for said reasons it is to the interest of the stockyard company and its stockholders to establish new packing plants at or adjacent to the stockyards, and these defendants, therefore, allege that it is good business foresight to

acquire in advance at least some available land at or adjacent to the stockyards.

"Sites for Stockyard Banks and Cattle-loan Companies:"

These defendants allege that banks and cattle-loan companies are established for the purpose of supplying to live-stock producers funds which before the development of such specialized institutions as cattle-loan companies have not been easily available, and therefore it is to their interest and that of the stockyard companies to facilitate the establishment of such institutions at or adjacent to the stockyards.

These defendants admit that a stockyard company has the power to designate how many and which banks or cattle-[fol. 24] loan companies may establish themselves within the yards which the stockyard company owns, but these defendants deny that any stockyard company in which they or any of them are interested, or these defendants or any of them have ever exercised such power arbitrarily or to the detriment of the interests of the live-stock raiser or have ever exercised such power at all. These defendants take pride in pointing out the part they respectively have played in financing the live-stock industry through the encouragement of such live-stock banks and cattle-loan companies.

"Rendering Plants:"

These defendants admit that the stockyard companies generally find it necessary to determine who shall purchase carcasses of animals which have died from disease or accident while in transit or after reaching the stockyards, but these defendants allege that the number of animals dying from disease or accident while in transit or after reaching the stockyards is generally not sufficiently large to attract capital or justify the existence of more than one company to handle such dead animals and generally no one company would undertake to perform the service or would invest the capital necessary to equip itself to perform the service of removing dead animals from the premises of the stockyards company if it were not assured of a sufficient volume of such business to justify such undertaking.

These defendants allege that the maintenance of a sanitary condition at the stockyards requires the prompt removal of such dead animals, and experience has shown that in order that such service may be rendered promptly and efficiently it is generally necessary to regulate such business and enter into an arrangement with any company seeking to perform such service, under which such company will agree to be ready at all times to perform such service promptly and efficiently. These defendants deny that the prices which have been fixed for such dead animals at stockyards where they or any of them have been interested are or have been arbitrary, unreasonable, or unjust.

"Commission Men's Office Space:"

These defendants allege that no one office can be leased and no one pen can be allotted to more than one commission man at a time; that necessarily some offices and some pens are more advantageously located than others; but these defendants deny the implied charge contained in the bill of complaint that there is discrimination on the part of any stockyard company in which they or any of them are interested in leasing office space and other accommodations and in allotting pens to commission men and traders at the stockyards.

"Terminal Railways:"

These defendants allege that the terminal railways, to facilitate the switching of cars from trunk-line carriers to the stockyards, from the stockyards to the packing plants, [fol. 25] and from the packing plants to the trunk-line carriers, are common-carrier railroads engaged in intrastate and interstate commerce, and that they are subject to the railroad commissions of the several States in which such railroads may be located and to the Interstate Commerce Commission of the United States; that under the laws of the several States and under the interstate commerce act of the United States it is illegal for such common-carrier railroads to discriminate between shippers in the location of sidings, spurs, or other accommodations, and severe penalties are prescribed under the several statutes aforesaid for such discriminations.

These defendants deny that there is or has been any discrimination against any packer or buyer by any stockyard terminal railway operating at any stockyards, described in the bill of complaint, in which they or any of them are interested; these defendants deny that any such terminal or stockyard railway has practiced any discrimination in granting or withholding sidings, spurs, or other accommodations required by any packing house, or by delay in loading animals brought at stockyards served by said railways, or in switching; and these defendants allege that in the operation of the stockyards and terminal railways described in the bill of complaint, in which they or any of them are interested, service is given to all alike without favoritism toward any shipper, dealer, packer, or buyer.

"Market Papers and Journals:"

These defendants deny that the control of trade papers and journals has been used by them or any of them as a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer, and these defendants allege that the only object of these defendants, or any of them, in owning or controlling trade or market journals has been to furnish adequate market information, including accurate price statistics and quotations, which were not otherwise available.

These defendants further allege that the establishment of such trade or market journals has been an important factor in affording better and more accurate information to live-stock producers and shippers as to the conditions of the respective markets to which they desired to ship their live stock.

These defendants deny the inferential charge contained in the bill of complaint that it is unlawful or improper for the parent companies mentioned in the bill of complaint or any of them to own, operate, or control the stockyards and facilities appertaining to stockyards or to derive a profit from such ownership, operation, or control of such stockyards.

These defendants allege that the operation of stockyards costs large sums of money and requires the investment of large capital, whether such stockyards are owned by these

defendants or by others, and the investors in such facilities must derive a profit if they are to continue to keep their capital invested therein. These defendants further allege that the profits derived by these defendants or any of them [fol. 26] from the operation of such facilities are only a reasonable return upon the investment and the capital employed and for the services performed; and these defendants deny that the charges made by the respective stockyards companies in which they or any of them are interested, for their respective services, would be lower were the stockyards operated by others than by these defendants. These defendants allege that the expense and the reasonable profits of operating such stockyards must enter into the final prices charged for meats, without reference to what interests own or operate such yards.

Said Swift & Company alleges that it is to its interest and it desires to have well-equipped and efficiently operated stockyards in connection with and adjacent to its packing plants, so as to attract adequate supplies of live stock for slaughter in such packing plants.

These defendants deny that control of stockyards and facilities appertaining to stockyards is used by these defendants or any of them as a means of favoritism in dealing with commission men. They deny that such control of stockyards and other facilities appertaining thereto has resulted in any discrimination by these defendants in favor of banks, cattle loan institutions, rendering plants, and concerns supplying food for live stock, which are located at or near to any of the stockyards described in the bill of complaint.

These defendants deny that control of stockyards and facilities appertaining thereto has been used by these defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence.

These defendants deny that control of stockyards and facilities appertaining thereto is or has been used by the defendants as a means to prevent the development and limit the number of new markets or to centralize and restrict business to the stockyards so controlled. These defendants deny that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by these defendants to information concerning the receipts and sale

of livestock, its disposition, and the dissemination of information to the producer.

"Branch Houses, Route Cars, Auto Trucks, and Cold Storage Warehouses

"Branch Houses:"

These defendants deny that the branch houses operated by the said Swift & Co. are merely storage stations, but these defendants allege that such branch houses are established and operated for the purpose of facilitating the sale and distribution of products produced and sold by said Swift & Co. and its subsidiaries.

These defendants allege that Swift & Co. and its subsidiary companies own or operate approximately only 400 branch houses in the United States and that said branch houses are operated in actual and keen competition with all of the branch houses operated by the other parent companies and their subsidiaries described in the bill of complaint. These defendants further allege that the number [fol. 27] of branch houses operated by the larger packers who are engaged in shipping commodities from one State to another is greatly in excess of the number operated by small packers doing a local business and not engaged in shipping their commodities from State to State and who, therefore, do not require branch houses in distant cities. These defendants further allege that a widespread selling organization is absolutely essential to the larger packer for the efficient marketing in the consuming markets of the East of the live-stock products which are produced in the West.

"Route Cars" and "Auto Trucks:"

These defendants allege that there is no significance in the fact that the five large packers operate 90 per cent of the car routes operated by the whole packing industry in the United States, for the reason that, and these defendants allege that, said car routes of the respective parent companies are operated in competition with each other and, further, that small packers doing a local business have no occasion and ordinarily do not undertake the distribution of their products by route cars to small towns at a distance from their packing plants.

"Cold-storage Warehouses:"

These defendants allege that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein. One of the purposes in operating such storage warehouses is to conserve the surplus supplies of seasons of heavy production for use during seasons of light production, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Said defendant, Swift & Co., alleges that it has provided only sufficient cold-storage warehouses and space for its own business and that of its subsidiaries. These defendants deny that such cold-storage warehouses or space has been operated or is operated in collusion, combination, or agreement with others of said parent companies or their subsidiaries, and these defendants deny that they have employed or that they do employ or that they can employ such cold-storage facilities in aid of the control of the price of meats or substitute foods.

"The Parent Companies' Acquisition of Above-described Facilities and Their Purposes in so Doing"

These defendants deny that the parent companies and their controlling heads, by a concert of action or pursuant to a common understanding, or otherwise, set about the acquisition of the various stockyards and the facilities appurtenant thereto, the terminal railways and market papers and trade journals, for the purpose (implied in the bill of complaint) of obtaining a primary profit, not only out of the sale of live stock purchased and slaughtered by them, [fol. 28] but also on that purchased and slaughtered by their competitors, or for the purpose (likewise implied in the bill of complaint) of repressing and discouraging development of so-called "independent packers and slaughter houses," or for the purpose of controlling the shipment of meat to the various markets.

These defendants are informed and believe, and therefore allege, that the following phrases, "independent packers and slaughter houses," "independents," "outside investors" or "outsiders," as used in the bill of complaint, mean

and are intended to mean persons, firms, or corporations engaged in the meat-packing or other business other than the defendants in the bill of complaint, and that such phrases imply and were intended to imply, without expressly charging, that the defendants in the bill of complaint are not acting independently of and in actual competition with each other.

These defe-dants allege that they, or some of them, have invested their capital in, have acquired the ownership of, and have operated stockyards for the purpose of securing an adequate and satisfactory supply of live stock for the operation of their packing plants adjacent to such stockyards.

These defendants deny that in any instance the ownership or control by other packers, or by anyone in fact other than the parent companies or one of them or their controlling heads of any stockyards in which these defendants or any of them are interested, has been discouraged or opposed.

These defendants deny that in pursuance of a common purpose, plan, and design, or otherwise, so-called "outside investors and independent packers" have gradually been forced out as dominant factors in the ownership and management of most of the important stockyards in which these defendants or any of them are interested, as charged in the bill of complaint.

These defendants further deny the inference in the bill of complaint that the means whereby these defendants or any of them secured an interest in any of the stockyards described in the bill of complaint were illegal, reprehensible, or contrary to good morals, but on the contrary these defendants allege that the acquisition of such interests or of capital stock in said several stockyards, whether by way of purchase or gift, was lawful and proper.

These defendants deny that said Swift & Company has availed itself of any control which may have been acquired by it in the stockyards companies mentioned in the bill of complaint, to grant exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which the parent companies or some of them, or individuals who

were stockholders in said parent companies, held the controlling stock.

These defendants deny that said Swift & Company, acting in concert or otherwise, with any or all other of the "parent companies" described in the bill of complaint, has employed any power or privilege, as alleged in the bill of complaint, with the intent, purpose, or effect of discouraging, suppressing the establishment of, or dwarfing the [fol. 29] growth of, so-called "independent packing companies" as might then be in existence, as charged in the bill of complaint.

These defendants deny that they or any of them have employed any power or privilege described in the bill of complaint to enable said "parent companies," their subsidiaries, or the individuals who, as alleged in the bill of complaint, own and control the "parent companies" and their subsidiaries to obtain vast profits from the management of the stockyards or the grant of privileges appurtenant thereto.

On the contrary, these defendants allege that any profits realized by them, or any of them, out of the ownership or operation of said stockyards, or any of them, have amounted to only a reasonable return upon their investment in said stockyards and a reasonable compensation for the services rendered by and the facilities furnished at said stockyards.

These defendants deny that any profit received by said Swift & Company, or its subsidiaries, from any source whatsoever have been enjoyed or realized by said companies, or any of them, without the same appearing or being disclosed in the profits of the "parent company." On the contrary, these defendants allege that the profits of said Swift & Company from each and every source are truthfully reflected in its balance sheets and financial statements, and such profits are annually audited and such balance sheets and statements are certified to be correct by independent and responsible certified accountants and are widely published and circulated.

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, or with their subsidiaries, has in any manner attempted to monopolize the meat industry of the

country, or artificially, or otherwise, to control the ultimate price which the consumer pays for meat and meat products, as charged in the bill of complaint.

"Contracts in Restraint of Trade:"

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, has entered into any unlawful contract or combination to restrain trade and commerce, or to artificially, or otherwise, prevent between themselves, competition in the prices for which meat and meat products are sold.

These defendants deny that they or any of them have entered into any contract, combination, agreement, understanding, arrangement, or practice, whether known as "the percentage purchase arrangement," as charged in the bill of complaint, or otherwise, which had as its ultimate object the elimination of competition not only in the purchase of live stock, but also in the sale of dressed meats; and these defendants deny that the "parent companies" agreed upon and recognized between themselves certain percentages or proportions to which they deemed that each company was [fol. 30] entitled; and these defendants further deny that said Swift & Company so gauged its purchases that annually its purchases approximated actually or substantially the percentage so alleged to have been agreed upon. These defendants further deny that the purchases of live stock by Swift & Company or by its subsidiaries has been made in accordance with or pursuant to any agreement, understanding, or arrangement in regard thereto.

These defendants deny that divers percentages covering purchases by the "parent companies" of live stock at the various stockyards were agreed upon; and these defendants deny that Swift & Company or its subsidiaries has been a party to any understandings, agreements, or arrangements whereby certain of the "parent companies" should buy at certain yards or should refrain from buying at certain yards, as charged in the bill of complaint.

These defendants deny that any arrangements, agreements, or understandings were entered into with any so-called "outsiders" whereby purchases between the "parent companies" and such "outsiders" (also designated in the

bill of complaint as "independents") were effected upon a percentage basis, as charged in the bill of complaint. On the contrary, these defendants allege that they are in actual and keen competition with all others engaged in the purchase of live stock and the slaughter and sale of meats, including the other "parent companies" and their respective subsidiaries described in the bill of complaint.

These defendants allege that Swift & Company is constantly striving to increase its purchases of live stock, and they allege that Swift & Company did increase its purchases of cattle nearly 3½ per cent in the four years ending with 1917.

These defendants allege that the "parent companies" and many other packing companies, which are not defendants in the bill of complaint, have long established packing business and have been engaged for a great many years in the purchase of live stock at the respective stockyards in which the purchase of live stock is carried on in open markets and in which each purchaser can see from day to day just what number and kind of live stock his competitors are purchasing, and all of said packing companies, large and small, are likewise severally striving to increase their respective purchases of live stock.

These defendants alleged that such constant effort on the part of all packing companies to increase their respective volume of business tends to bid up the price for live stock to a point where the packing company can no longer afford to buy, for the reason that and these defendants allege that, the packing company, whether large or small, cannot afford to pay more for live stock than it can get from the consumer for the meat and the by-products of the live stock.

These defendants allege that such persistent, watchful and keen competition prevents said Swift & Co. from increasing its proportion of the total live stock purchases materially during any one year, but these defendants deny that such fact is evidence of or tends to prove any contract, agreement or understanding between the "parent companies" for any apportionment of live stock purchases [fol. 31] among them, but on the contrary these defendants allege that such fact results from an economic law which is applicable to every established industry where competition exists, and is peculiarly true of the packing business for the reason that the well known small profit of packing com-

panies on the sales of their products (heretofore in this answer referred to) fixes a narrow range within which any packing company can afford to bid up the price of live stock in order to increase its proportion of the total purchases of live stock.

These defendants alleged that by far the largest proportion of live stock for meat purposes is produced in the Western States and particularly in the States lying west of Chicago and that by far the largest proportion of the fresh meat and by-products resulting from the slaughter of such live stock is consumed in the Eastern States and particularly in the New England and North Atlantic States; that as a result of the invention of the refrigerator car, it is more economical to slaughter live stock in the West near the sources of supply and ship the fresh meat and by-products to the numerous consuming centers in the East than to ship the live stock from the West to such consuming centers in the East for slaughter.

These defendants alleged that approximately 90 per cent of the meat derived from live stock slaughtered in the West is not sold or consumed at the place of slaughter, but is shipped long distances, the largest part thereof being shipped to cities and towns in the East at which such fresh meat must be sold promptly for the best price there obtainable, for the reason that fresh meat is a highly perishable commodity and each succeeding day it is held it will bring a constantly lower price.

These defendants allege that no agreement or other arrangement concerning the purchase of live stock can have any effect upon prices which the fresh meat will sell for at the consuming centers, but that the price which can be obtained for the fresh meat is dependent upon the supply of meat and the demand for meat at the city or town where the meat is offered for sale.

These defendants allege that, even if the defendants should enter into an agreement or other arrangement affecting the aggregate number of live stock purchased, as charged in the bill of complaint, such agreement or arrangement could not change the then existing supply of fresh meat or affect the then demand for that supply of fresh meat at the local market in the East; and that if the local market in the East be glutted with fresh meat, prices will fall without reference to the quantity of live stock at that

time being purchased in the West or the price paid therefor; and likewise if the local market in the East has less fresh meat upon it than there is demand for, prices for that limited supply of fresh meat in that market will rise without reference to purchases and prices of live stock in the West; and that no agreement or other arrangement can affect prices of fresh meats at the local selling points that does not operate upon the supply of meat or the demand for meat at that particular point.

These defendants deny that they or any of them are directly or indirectly a party to any such agreement, com- [fol. 32] bination, or arrangement to directly or indirectly affect the supply or demand for meats; but they allege that the prices at which they buy live stock and sell fresh meats and all other commodities sold by them are determined solely by the economic law of supply and demand.

These defendants deny that means were adopted by them or any of them, whereby and by virtue of the "parent companies" alleged control over many stockyards, as charged in the bill of complaint, sales to so-called "outsiders" or "independents" were controlled by the "parent companies"; and these defendants deny that such control as the "parent companies" have exercised over stockyards, stockyards' loan institutions, terminal railways and other privileges and perquisites to the operation of such stockyards has discouraged opposition or competition by commission men or such so-called "independent packers," as charged in the bill of complaint.

"Control of Substitute Foods"

These defendants deny that they or any of them have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiary companies entered upon the business of handling fish, vegetables, either fresh or canned, fruits, milk, poultry, butter, eggs, and cheese for the purpose of utilizing their distribu-

tive sales agencies economically, as they had a lawful right to do.

These defendants allege that the handling of such products through its branch houses enabled Swift & Company and its subsidiary companies to dispose of a larger volume of products without a proportionate increase in expense; and has been in the interest and for the benefit of the consuming public, in that it has enabled the consuming public to receive said perishable products in a better condition for consumption than would have otherwise been the case. These defendants allege that the handling of said products has made it possible for Swift & Company and its subsidiary companies to establish branch houses and car routes at points which would not support a branch house or a car route handling only meat products, thus reaching a territory and serving a consuming public theretofore without a satisfactory means of supplying its wants in said perishable products; and, likewise, furnishing a broader outlet for the farmers' products by reaching a broader consuming public.

These defendants allege that there is, and can be nothing illegal or reprehensible in the defendants reaching "remote spots" as insinuated in the bill of complaint. On the contrary, these defendants allege that such reaching of "remote spots" is lawful and in the public interest. These defendants allege that they had and have a legal right to handle said products and are economically justified in so doing.

[fol. 33] These defendants deny that Swift & Company or its subsidiaries ever employed their distributive facilities or otherwise to fix prices so low as to eliminate competition.

These defendants deny that they or any of them have attempted to monopolize commerce in any of the food products above mentioned and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food products, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiaries handle an amount of so-called "substitute foods" which is negligible in comparison with the Nation's supplies of such "foods."

These defendants deny that unless prevented by a decree of this court, the defendants will, "within the compass of a few years, control the quantity and price of each article of

food found on the American table," as charged in the bill of complaint.

"Extent to Which the Monopolistic Attempts Have Been Successful"

"Financial Growth, Present Net Worth, and Volume of Business:

These defendants allege that they have no knowledge in regard to the financial figures of "parent companies" other than Swift & Company, and therefore these defendants neither admit nor deny the averments contained in the bill of complaint in regard to the aggregate financial growth of the "parent companies," or in regard to the payment of cash dividends by said companies. These defendants deny that it is illegal, reprehensible, or contrary to good business morals, as impliedly charged in the bill of complaint, to reinvest earnings of the defendant corporations in their business. These defendants allege that the profits made by Swift & Company and its subsidiary companies have been reasonable and have been the lowest possible consistent with a reasonable return upon the investment in the business, and have been so low as to practically not affect the prices at which its products are, or have been, sold to the consuming public.

These defendants deny that vast profits, whether difficult of ascertainment or otherwise, have been realized by the individual defendants by virtue of either their alleged personal control of other packing houses and slaughtering companies than the "parent companies" and their subsidiaries, or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions, and other corporations, as charged in the bill of complaint. And these defendants deny that such corporations had their inceptions in, or depend for their prosperity upon advantages or privileges growing out of interlocking control of stockyards and stockyard companies.

"Number of Controlled Companies":

These defendants have no knowledge of the number of corporations, trade names, or concerns in which other "parent companies" than Swift & Company or their respec-

tive subsidiaries have an interest, and therefore they [fol. 34] neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which the "parent companies" or the individual defendants and their families maintain and control, as set forth in the bill of complaint; but these defendants deny that they have acquired or organized any concerns or corporations in furtherance of any scheme or plan of action, general or otherwise, for the purpose of restraining or monopolizing trade or commerce, as alleged in the bill of complaint.

"Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:"

These defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

These defendants have no knowledge of the averments contained in the bill of complaint as to the value of business transacted by Armour & Company in 1916, and therefore these defendants neither admit nor deny said averments.

These defendants deny that they, or any of them, have any purpose or intention to secure control of the market for "meat substitute foods," as charged in the bill of complaint.

These defendants deny that it is illegal, reprehensible, or against good business morals for the "parent companies" in a large number of instances to contract for the exclusive output of many other companies engaged in the production of so-called "substitute foods" and so-called "unrelated commodities"; or to market the outputs of such companies through the distributive facilities of the "parent companies" or their subsidiaries; or in this fashion for the "parent companies" to control the output of such concerns and the market price of their products as completely as though they themselves owned the producing companies; but these defendants deny that any of them is or has been a party to any combination, agreement, understanding, contract, or conspiracy to restrain trade or monopolize commerce in meat products or substitutes or other foods consumed in the United States.

"Individual Defendants"

These individual defendants admit that they or some of them are officers, directors, agents, employees, or stockholders of Swift & Company, described in the bill of complaint as a parent company, or of the so-called "Swift defendants," described in the bill of complaint as corporations, or some of them, or the so-called "other defendants," described as corporations in the bill of complaint; but they deny that they are officers, directors, agents, employees, or stockholders of any of the other so-called "parent companies" or their subsidiaries.

Said individual defendants admit that some of them are, in their individual capacity, financially interested in stock-[fol. 35] yards, terminal railways, cattle loan banks, rendering companies, and other institutions located at or adjacent to stockyards.

Said individual defendants allege that the corporations dealing in so-called "substitute foods" and so-called "unrelated commodities," referred to in the bill of complaint, are controlled by their respective stockholders acting by and through their duly elected directors and officers.

Said individual defendants admit that in many instances stock certificates representing capital stock of corporations which are owned by said Swift and Company stand in their respective names as a matter of convenience to such "parent company," but that such stock certificates are owned and held by said "parent company"; and these individual defendants deny that there is anything illegal or reprehensible or contrary to good business morals in their said activities.

Said individual defendants deny that they have or exercise any control over the facilities or instrumentalities of the meat business other than as aforesaid, and they deny that by reason of their interests in such corporations dealing in so-called "substitute foods" and so-called "unrelated commodities" the parent companies are enabled to carry out the alleged purpose of the combination charged in said bill of complaint.

These individual defendants deny that their interests in such corporations hereinbefore described are now or will continue to be a sinister or every present means of furthering any attempt to monopolize or to perfect a monopoly, so

that the "parent companies" or their subsidiaries will have or will ever have complete control either of meat products or of all so-called "substitute foods" consumed in the United States, as charged in the bill of complaint.

"Subsidiaries Defendant"

These individual defendants deny that New England Dressed Meat & Wool Company, a corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Company, a corporation organized and existing under the laws of the State of Maine, are subsidiaries of any "parent company" described in the bill of complaint, or that any so-called "parent company" has any ownership, interest or title in and to any of the capital stock or property of any of the said companies.

[fol. 36] These individual defendants further deny that Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California; Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada, are subsidiaries of any of the so-called "parent companies," or any of them, as charged in the bill of complaint, or that any of said "parent companies" has any ownership, interest, or title, directly or indirectly, in or to any of the capital stock or property of any of said companies.

Conclusion

These defendants deny that they or any of them is or has been a party to any combination, agreement, understand-

ing, contract, or conspiracy to restrain trade, or to monopolize commerce in meat products or "substitute foods" consumed in the United States.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore these defendants pray that the bill of complaint herein be dismissed with costs:

Swift & Company (Illinois); Swift & Company (West Virginia); Swift & Company, Inc. (Kentucky); Swift & Company, Ltd. (Louisiana); Swift & Company (Maine); Swift Beef Company; United Dressed Beef Co of New York; J. J. Harrington & Company, Inc.; Bimbler Company; The G. H. Hammond Company; Omaha Packing Company; Plankinton Packing Company; Sturtevant & Haley Beef & Supply Company; E. K. Pond Packing Company; Van Wagenen & Schickhaus Company; Hammond Beef Company; Omaha Meat Company; A. Canfield Commission Company; H. C. Derby Company; Metropolitan Hotel Supply Company; Vermont Supply Company; The Hotchkiss Beef Co.; Western Packing Company; Louis F. Swift; Edward F. Swift; Charles H. Swift; Gustavus F.

[fol. 37] Swift, Jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Frank S. Hayward; Charles A. Peacock; Wilfred W. Sherman; Wellington Leavitt; John M. Chaplin; William B. Traynor, by Henry Veeder, Their Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF ARMOUR DEFENDANTS—Filed February 27, 1920

The joint and several answer of Armour & Company, a corporation organized under the laws of the State of Illinois; Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour & Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing & Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and existing under the laws of the State of Illinois; The New York Butcher's Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York; and of J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurance H. Armour, Arthur Meeker, R. J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, defendants to the petition or bill of complaint of the United States of America.

These defendants, for answer to the said petition or bill of complaint, or unto so much or such parts thereof as they

are advised it is necessary or material for them to make answer unto, answering, say:

[fol. 38] I

They respectively admit, for all the purposes of this suit or proceeding, the organization and existence of the respective corporate defendants, and that they were organized respectively under the laws of the respective States as stated in said petition or bill of complaint.

II

They respectively, for like purposes, admit that Armour & Company of Illinois referred to in the said petition or bill of complaint as the parent company, is, either directly or through subsidiaries, engaged in (a) the purchase and slaughter of live stock; (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter; (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal; (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used; (e) the manufacturing, canning, or otherwise preparing to a limited extent for the market and the sale and distribution of food supplies other than meats, such as are referred to in said petition or bill of complaint as substitutes for meat foods, but deny that it is either directly or indirectly engaged in the manufacturing or canning or packing of fish, vegetables, or cereals; (f) the manufacture and sale to a limited extent and primarily for the purposes of its own business of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of this parent company, such as are in said petition or bill of complaint referred to as (but which these defendants respectively deny are) unrelated commodities, but these defendants deny that the allegations of said petition or bill of complaint in respect to the activities of said defendants show facts which constitute interstate or foreign commerce.

III

These defendants respectively deny that by the supposed unlawful means and methods set out or complained of in

the said petition or bill of complaint, or any or either of them, or by any other unlawful means or methods, or otherwise, this parent company and defendants referred to in the said petition or bill of complaint as its subsidiaries, or any or either of them—acting by or through their principal officers, who have been made defendants herein, or otherwise—have attempted to dominate, control, or monopolize a very great or any proportion or part of the food supply of the Nation (other or otherwise than as they respectively, lawfully, and properly carry on and so therein lawfully and properly dominate and control their own respective legitimate businesses, as they lawfully may); or that they, or either of them, have thereby or otherwise, or in any way, built up an unlawful monopoly or control over divers and [fol. 39] sundry or any products or commodities in said petition or bill of complaint referred to, or of any products or commodities whatever.

These defendants respectively deny that this so-called parent company and the subsidiaries, defendants, or any or either of them, by the same or similar methods, or otherwise, are attempting to increase or extend any supposed monopoly such as referred to in said petition or bill of complaint or otherwise; or that there is or has been any such, or any monopoly; or that they or any or either of them are enabled thereby, or otherwise, to, or do, artificially control the supply and the price, or either of them, of the food supplies of the Nation, or of any part thereof.

These defendants deny that they either with the other defendants to said petition or bill of complaint, or any or either of them, or otherwise, have created or obtained, or that these defendants, or any or either of them, have attempted to create or obtain, any monopolies or monopoly in or of the interstate trade or commerce, or of any part of the interstate trade or commerce, in or of live stock, meat products and substitute foods, or any or either of them, or in any other products or commodities, or that they have acquired or have, or have ever had, certain or any instrumentalities, facilities, or advantages by which they have been or are or might be enabled to more effectively or otherwise, or in any way, monopolize, or that they have in any way monopolized or attempted to monopolize any part of the trade in such, or any, products or commodities, or that they are or have been engaged in any contract or contracts,

combination or combinations, or conspiracy or conspiracies in restraint of trade or commerce among the several States, either with each other or with any other person or persons.

They deny that they have acquired or have any instrumentalities, facilities, or advantages other than such as are lawful, fair, and proper, and as have legitimately resulted and come, and do legitimately result and come from their industry, application, skill, experience, and efficiency in the proper organization and conduct of their business and trade and such as have been and are open to any others to possess or acquire and exhibit and apply.

IV

These defendants admit that this parent company, Armour & Company is the successor or natural outgrowth of concerns of many years' standing and that its principal business is the purchase and slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses and the preparation and distribution and sale as and to the extent of the dressed meat and food products, and the distribution of the dressed meats in interstate commerce (as well as in intrastate commerce) through various means, by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers, and also including in their said business the saving and utilization for its most valuable uses of every part and portion of the slaughtered animal, and their preparation for [fol. 40] market and their use in the manufacture or production of useful commodities in whole or in part therefrom, and the sale and disposition thereof.

V

The invention and the use by these defendants of refrigerator cars, by means of which the dressed meats might be and are transported long distances and preserved free from decay during transit, have enabled them to widely extend their market for fresh meats, and to slaughter the livestock near the source of supply in the meat-producing sections of the West and to sell the products thereof in the more densely populated and meat-consuming centers of the East, and thereby supply a greatly increased demand therefor and consumption thereof; and they say that this has

resulted in a large economic saving to both producer and consumer and in a greater demand and a ready cash market for live stock to supply such demand for such meats, and an increase of live-stock production as a dependable source of supply of meat and products of meat animals.

The "route" refrigerator cars have been employed to carry such meat supply to the smaller towns and places which require smaller and less than carload quantities; and for the same purpose auto trucks have been introduced, when more prompt and efficient than railroad cars; to supply smaller towns and places or where the places are not reached by railroad service.

That the ownership and use of refrigerator cars by the defendants and of an efficient organization to handle them were and are necessary for the legitimate purposes of defendants' business aforesaid, and the carrying on thereof and of preserving in transit the fresh meats and commodities requiring refrigeration in order to prevent their quick decay and to enable their transportation in good, wholesome condition to the markets where they were to be disposed of and consumed; that such provision and ownership and handling and operation of such refrigerator cars by the defendants and other packers has been going on for many years and has been approved, authorized, and regulated by the Interstate Commerce Commission and its lawfulness, necessity, and economic utility full established and recognized.

These defendants deny that through the ownership and use of said refrigerator cars or the operation of said route cars or otherwise they have or enjoy any unlawful rates, concessions, privileges, or advantages from the railroads or the carriers and say that they ship their products under tariffs and rates, rules, and regulations prescribed in valid, published tariffs on file with the Interstate Commerce Commission and pay the same rates and operate under the same rules and regulations as are lawfully prescribed for and paid and observed by, or available to, all others shipping the same or like commodities.

VI

These defendants admit that such stockyards as are described in said petition or bill of complaint which are public [fol. 41] stockyard markets are employed for the yardage

and care of cattle, sheep, and hogs at places where such live stock are customarily offered for sale and sold and have been shipped for sale, and that customarily all who wish either to buy or sell such live stock have been and are given free access to and the privilege to trade in and buy and sell live stock in such yard. When and as the amount of business at such a stockyard has become or been large enough to call therefor, men who are or become skilled therein have engaged and do engage in the purchase and sale of live stock at such yards as commission men for those who desire to purchase or have live stock for sale. The principal business of such commission men in the sale of live stock for producers or shippers who desire their services and do not wish themselves to trade in person at the yard. Such commission men customarily are the consignees, as well as the agents of the shippers of live stock whom they serve, and have no connection or affiliation whatever with the defendants, and have or need to have no financial or other relationship with owners of the stockyards, other than as tenants of offices and in dealing with the stockyard companies with respect to the yardage and care of live stock consigned to them and the allotment to such commission men of pens in the yards in which the live stock consigned to them is yarded and sold.

The sales and purchases of live stock at such yards customarily take place in, at, or near the respective pens in which the live stock dealt in are confined and in which they are shown to and examined by the proposed buyer.

The live stock are sold by weight per 100 pounds, and upon the sale are weighed by the stockyard company from seller (owner or commission men) to buyer; and the stockyard company makes and keeps a record of the sales and weights as well as of the receipt and yardage, feeding, and care of the live stock.

Statistics and data as to the market prices for each day, including numbers and kinds and grades of live stock received or to arrive on that day at that stockyard and at other yards, and prospective receipts are publicly posted by the stockyard company at the Exchange Building and usually at other well-known places in the yard.

While the stockyard company has and exercises such control of the yards and of its own provision and furnishing of the facilities which it provides as the performance of

its function in those respects calls for and makes necessary, it makes no unjust or unfair discrimination, of which these defendants are aware, as between different companies or persons who make use of such facilities, either as to providing sites or locations for packing houses or among those desiring them, or as to granting switch tracks or sidings or other accommodations, which are subject to the control of the public utilities commission or similar body in the State, or of the Interstate Commerce Commission, or as to location of banks or loan companies or offices of commission men, or the allotment to commission men of pens, except that (as defendants are informed) there is or may be observed a long-standing custom of permitting commis- [fol. 42] sion men to retain their live-stock pens from year to year as they do their offices.

These defendants say that if there is or has been any unjust, unfair, or intentional discrimination on the part of any stockyard company, or of any terminal or other railroad at any such yard or yards, toward or for or against any packers or buyers or users or sellers or commission men, in any or either of the matters or respects aforesaid, or in or by practicing delay in allotting animals brought or in switching loaded cars to connecting lines, or in any other respect whatever, these defendants, as to any such case have not, nor has any or either of them, been knowing or privy thereto or in any way whatever responsible therefor.

The statements in the said petition or bill of complaint of the character of services performed by the commission men and with respect to the services performed by the stockyards companies are believed to be accurate.

These defendants believe it to be true that the charge of the stockyard companies for yardage, feed, and other services and materials furnished by them are prescribed by the respective stockyards companies rendering such services. So far as these defendants, respectively, have any information or are aware of the services, facilities, and conveniences rendered by the respective stockyards or of the charges made by them therefor, they are rendered and made fairly and without any discrimination as between different shippers, commission men, companies, and persons to or for whom they are rendered or made. With respect to each and every such matter or things, these defendants

have not and have never had or exercised any control, interference, or say whatever to or toward the giving or showing any partiality or discrimination to or against one customer thereof against or to another.

These defendants deny that with respect to the allotment to or the seeking by any company or person, other than themselves, of packing sites or sites for packing houses, or — respect to the number of plants or packing houses that should be established at the respective stockyards or any or either of them, or with respect to the allotment to or securing by any banks or loan companies of locations or sites for their banks or offices, or of any or either of them in or near stockyards, or with respect to the designation of how many and which banks or loan companies might establish themselves at or near such yards or any or either of them, these defendants have not, nor has any or either of them, interfered or sought to interfere, or to direct or control the same.

Defendants deny that they have or either of them has jointly or severally used or exercised any power, control, or interest they may have in any stockyard companies to hinder, impede, or prevent the establishment, enlargement, or development of packing plants at any such yards, nor has there been any such hindering, impeding, or preventing, so far as they have any knowledge, information, or belief. The action of any such stockyard company or companies has been to encourage the establishment of such packing plants and businesses as would tend to develop [fol. 43] and increase the legitimate business and business interests of such stockyard companies. That this same statement applies to the action of the stockyard companies with respect to sites for banks and loan companies.

While such banks and loan companies as are, or may be, located at or near the stockyards do a considerable business, according to the information and belief of these defendants respectively, the great bulk of such cattle paper is not held by such banks or loan companies, the principal business of which is not to lend money but to discount and guarantee the note of the live-stock producer or dealer and thereby lend and pledge their credit to enable such live-stock producers or dealer to secure money from the eastern banker necessary for the purpose of his business, and any statement or inference in the said petition or bill of com-

plaint that stockyard companies through control of bank or loan company sites can or do wield or have an influence or effect over stockmen or raisers of or dealers in live stock, in any way or sort whatever to the detriment or prejudice of such stockmen, raisers, or dealers is untrue. Any statement or inference in the said petition or bill of complaint that these defendants, or any or either of them, have wielded or exercised, or do wield or exercise any such influence, or that they, or any or either of them, have attempted or do attempt to wield or exercise or have any such influence is untrue and baseless.

VII

As to terminal railways: Defendants say that in order to facilitate the connection at stockyards with main or trunk line railroads for the purpose of switching cars from such railroads to stockyards, from yards to packing plants, from packing plants to main or trunk line railroads, it is necessary and proper that terminal railways should be constructed for such purpose, and that stockyard companies have established such roads and have acquired an interest in and use such roads to promote the development and use of stockyards at a satisfactory and attractive market center for live-stock producers and shippers, offering and affording such producers and shippers adequate transportation service at such stockyards, and offering and affording all industries there located like service. These defendants deny that they, or any or either of them, have sought or acquired or exercised, through their interest in stockyard companies or otherwise, any interest or control in such terminal railways for the purpose of discriminating against other packers or independent buyers or engaging in, bringing about, or doing any improper or unlawful practices, or been responsible for any unlawful acts or conduct whatever in connection therewith.

VIII

As to market papers and journals: Defendants say that producers of live stock require and should be furnished full, accurate, and unbiased reports of the demand for live stock, the prices prevailing at various markets, and such other information as to market or trade conditions as they may desire. These defendants deny that they, or any or

[fol. 44] either of them, now own any interest whatever in such market papers or journals, or that they have ever owned an interest in such papers or journals published at the larger and well-established markets, such as those at Chicago, Kansas City, or Omaha, and defendants say that such financial interest as they may have had in the past in market papers and journals at any of the smaller yards was acquired for the purpose of rendering aid to and was prompted by the desire to develop these places as market centers attractive to producers of live stock through proper publicity, and advertisement, and dissemination of accurate information, regarding market conditions, both local and general, and that such papers and journals are a necessary and proper adjunct to the building up and establishment of a live-stock market; that the statistical information therein published and disseminated is collected and secured from the records of the various stockyards open and available to the public generally and others locally, and published in all daily papers where the yards are located.

IX

As to rendering plants: It is true that while in transit and after reaching the yards live stock often die, either from disease or accident, and the stockyard companies, as a matter of proper regulation, arrange for the disposition of the same; and that there has customarily been only one such rendering plant at each of the important yards. Such regulation, which was the result of many years of experience, is primarily in the nature of a sanitary precaution, and it is essential that disposition of such dead animal bodies be prompt and efficacious, and the experience of many years has demonstrated that such prompt and efficient service can best be secured by the method followed at most of the stockyards of disposing of such animals to some one rendering company. These defendants say, however, that they have not, nor have any or either of them been, nor are they or any or either of them responsible for any improper practice therein or in connection therewith.

X

Referring to the specification in the said petition or bill of complaint as to the consequences or results flowing from the control by the stockyard companies of the facilities per-

taining to the stockyards, these defendants say (a) that of course a profit is properly derived from the live-stock industry by and from the services and charges rendered by the stockyard company to such industry, and these defendants assert such profit will be so properly derived therefrom whether these defendants or any of them own or control any interest in said stockyards or not; (b) that if there be a potential means of favoritism on the part of stockyards in dealing with commission men or influence over them or in the alleged power of the stockyard companies to grant monopolies, carrying with it profit to banks, cattle loan institutions, rendering plants, or sources [fol. 45] supplying food for live stock and others; or (c) if there be a potential means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or (d) to prevent the development or limit the number of new markets, or to centralize or restrict business to stockyards so controlled; or (e) if there be any such means of favoritism from having peculiar or exclusive access to information concerning the receipts and sale of live stock, its disposition and the dissemination of information to the producers or others, and these defendants assert that the receipts and sales of live stock are public records of the various stockyard companies, open and available to the public generally, and that such information is posted on bulletin boards at such yards and published in the daily papers where the yards are located; these defendants deny that their interest in or control of any stockyards has been used as a means of any such favoritism or discrimination or any or either of the evils or improper practices so charged to be possible in the conduct or control of the existing stockyards, or any or either of them.

They respectively deny that they, or any or either of them, have at any time or in any way participated in or favored, or been privy to any such conduct in the control or operation of the stockyards or the facilities appertaining thereto, in any case.

XI

As to branch houses, route cars, auto trucks, and cold-storage warehouses: Defendants are without information upon which to base a belief as to the total number of

branch houses maintained by interstate slaughterers other than this defendant parent company.

The defendant parent company, Armour & Company, has approximately 400 of these branch houses located at or near the centers of consumption. These are necessary in order to enable it to properly handle a perishable product in such manner as to maintain adequate supplies at all times.

These defendants deny that said branch houses are cold-storage stations, but, on the contrary, assert that they are marketing and manufacturing facilities and are maintained for the express purpose of facilitating the distribution of its perishable products in such prompt and expeditious manner as will insure the same reaching the retail trade and ultimately the consumer in the best possible condition; that approximately one-half of these branch houses are equipped with refrigerating machinery, and that many of them located in the large centers are equipped with facilities for turning raw materials into the finished products—that is, smoking meats, boiling hams, and manufacturing sausage; that this is necessary in order not only to meet trade requirements but to place these defendants upon an equal competitive basis with local packers operating killing establishments; that they are maintained by these defendants for the purpose of marketing and distributing of their products and to afford to the local retail butchers the opportunity to make purchases of meat and meat products while in fresh, wholesome condition; and that such branch [fol. 46] houses are equipped with only sufficient cooler space for the needs of their marketing facilities in the particular locality where they are located, the turnover of such branch houses in said products being usually every week or every two weeks at the most.

These defendants say, and they submit that it is obvious and not open to question that such branch houses for the proper receipt, care, sale, and distribution of their products and merchandise are lawful and proper business facilities therefor and for supplying the wants of their customers and consumers. Defendants further say that direct and active competition exists between all of the various branch houses of this defendant corporation and those operated by each and all of the other defendant corporations named in this bill of complaint and between those operated by others en-

gaged in the meat-packing industry and various commission merchants and others who have the necessary facilities for handling like products; that such branch houses are recognized by the various communities they serve as of great and permanent value to the members of such community as well as of those resident in the immediate vicinity as affording to the people of such communities and surrounding territory an opportunity to secure under competitive conditions meats, meat products, and other commodities while in a fresh and wholesome condition.

Route cars are refrigerator cars which travel certain routes at stated intervals, supplement the branch houses and furnish prompt, efficient, and adequate service to such towns and places as are not of sufficient size in themselves to warrant maintenance of a branch house. These cars carry only such products as have been previously ordered and are needed to supply such orders. These defendants are without information upon which to base a belief as to the number of such route cars sent out by other defendants, or the number of dealers reached, or the number of cars owned by such other defendant parent companies.

Motor trucks make possible the rendering of such service to many towns and places which are not reached or served by route cars, or by branch houses. These defendants deny that these defendants reach or serve with such auto trucks a total of 20,836 towns throughout the United States and say that the number of towns so reached is about 1,500.

As to cold-storage warehouses: These defendants say that cold-storage warehouses were first used in connection with the packing business for the chilling of meats and later were adapted to branch house use so that meats and meat-food products might be kept in prime condition for sale to the retailer; that from the beginning, such warehouses have been, and now are, necessary instrumentalities in connection with the business of these corporation defendants in order that such business may be properly and efficiently handled and the volume of their slaughter of live stock and sale of dressed meat and meat-food products, for both domestic and foreign trade, extended to meet the constantly increasing demand therefor; these defendants further say that they have established or acquired an interest in cold-storage [fol. 47] warehouses in large eastern seaboard cities and

elsewhere where cold-storage facilities or space was required for the storage of commodities wherein said defendants were interested and that these defendants have leased and do lease space therein to the public where, owing to seasonal conditions or fluctuations in foreign or domestic demand, it has not been possible completely to utilize such cold-storage facilities and space for defendants' then existing needs; these defendants deny that their establishment, use, or control of cold-storage warehouses was for the purpose, or has been employed or used to aid, or has aided, in any alleged control of the price of meats and substitute foods or any other commodity or commodities.

XII

As to the acquisition by this defendant parent company of interest in or control of stock[illegible]rds, or the facilities appertaining thereto, and their p[illegible]ose therein:

As to stockyards: These defendants jointly and severally deny that through a concert of action or pursuant to a common understanding with, or by acquiescence of any one or more of the parent companies named in said petition or bill of complaint, or otherwise, they or any or either of them set about the acquisition of the various stockyards and appurtenances and privileges incidental thereto for the purpose (as is implied in said petition or bill of complaint) of securing any such advantage or advantages as are alleged in said petition.

These defendants jointly and severally deny that there is or ever was any common purpose, plan, or design to which they, or any or either of them, were a party, to force the withdrawal of outside or any investors, or so-called independent packers, or any or either of them, as dominating or other factors in the ownership or management of most or any of the important or any stockyards; or that by or through any such purpose, plan, or design outside investors or so-called independent packers have been gradually or otherwise so forced out or been replaced by the defendant parent company, Armour & Co., or its representatives.

These defendants deny that they or any or either of them have availed themselves of any interest they may have in any stockyards or exercised any control they may have over such stockyards for the purpose of electing officers or directors or otherwise dominating or controlling the policies

thereof for the purpose of granting exclusive privileges, such as the right to purchase dead animals or the right to furnish supplies and facilities and fix the location or give favorable sites for cattle banks or cattle loan companies to concerns or corporations in which they or some of them or individuals, who are stockholders in this defendant parent company, hold the controlling stock or that they have, acting in concert or otherwise, employed any of the powers and privileges alleged in and more specifically set forth and discussed in said petition or bill of complaint under the title "nature of the business and method by which it is conducted" with the intent or purpose or effect of discouraging [fol. 48] or suppressing the establishment of independent packing establishments or dwarfing the growth of such independent packing companies.

These defendants jointly and severally deny that this parent corporation, Armour & Company, or its subsidiaries, or the individuals who, as alleged in the bill of complaint, own and control this parent company and its subsidiaries were enabled by any of the alleged methods or means set forth in said petition or bill of complaint to obtain vast profits from the management of stockyards or granting of privileges appurtenant thereto; these defendants further deny that this parent company, Armour & Company, or its subsidiaries have thus been enabled, as is alleged, to enjoy and realize or otherwise have obtained or enjoyed or realized such, or any, profits without the same appearing or being disclosed in the profits of this said defendant parent company; these defendants further deny that they, or any or either of them, have attempted thereby or otherwise to monopolize the meat industry of the country or artificially to control the ultimate price which the consumer pays for meat and meat products.

These defendants say that in the course of the growth and development of the live-stock and producing and slaughtering and packing industries they have aided in the establishment of stockyards at points near or nearer the live-stock production than theretofore existing stockyards, and have taken over, or assisted in taking over and developing, what were small and inadequate yards at other points where they had been inaugurated, and have established at such places extensive and adequate packing plants, with the result that growers of live stock about or tributary to these

localities now have properly equipped and efficiently operated marketing places so situated in relation to their farms and ranches as to afford them a ready market for the disposition of their live stock at a saving of freight, labor, cost, shrinkage, and other expenses. That the defendants have not heretofore in any way hindered, impeded, or prevented the establishment or operation of such or any stockyards by others, or the establishment thereat of any packing plants of others than themselves. That with respect to some of such yards, others of the defendant parent companies have also joined or co-operated in the establishment and development of such yards and have established packing plants thereat.

That in the cases where these defendants, or any or either of them, have established or aided in the establishment of stockyards, the motive of the defendants therein has been the proper motive of building up, or developing, or aiding in the building up, or development, of the industry and trade in live stock and the products thereof, as well for the benefit and development of the live-stock producing industry as of their own packing industry, and in certain cases principally for the establishment and development of the live-stock producing industry, and to bring a market for the livestock near to the production thereof.

That so far and to such extent as any or either of these defendants have acquired and held or owned any capital stock [fol. 49] or other financial or property interests in any or either of the live-stock yards or stockyard companies, such acquisitions and investments were and are held and owned for proper and legitimate purposes and from proper motives and considerations, and not otherwise.

These defendants say that the great industry in which they have been and are engaged of producing fresh meats and other products of slaughtered cattle, hogs, and sheep, and which was built up by the predecessors in the ownership and conduct of the defendant parent companies, and has been continued by the present owners and managers thereof, is and always has been properly allied with and dependent for its proper development and success upon live-stock raising and production, as well as upon the provision of adequate markets and facilities for the marketing of such live stock; and that in the interest of their own packing industry and the provision of markets and market

facilities, they have been guided and led into a proper interest in the development, maintenance, and carrying on of live-stock markets, and some of these defendants have, as they properly and lawfully might, acquired financial interests in the capital stock of certain stockyard companies. But at no time have they or any or either of them used or attempted to use the same in any way whatever to the prejudice or detriment of live-stock producing interests or other interests concerned in or affected by the operation, management or conduct of any stockyards, or upon any other theory or conception than that their best interests in such stockyards, and their investment therein call for and require such conduct and management thereof as would best serve and promote the interests of the live stock producing industry and the extension and increase in the production of live stock, upon which the success of such stockyards depended and the provision by and through such yards of the most efficient facilities and service for the receipt and care and marketing of such live stock.

These defendants—maintaining that the acquisition and holding by them or any or either of them of shares of the capital stock of stockyard companies as and for the purposes aforesaid and for investments and for the dividends or profits therefrom, are lawful and proper and not against any public policy or ground for any just or fair animadversion or criticism—nevertheless say that they are entirely willing that such stockyards shall be controlled and the burden of their maintenance and operation assumed by others who will properly maintain and operate such yards in and for the best interest of the live-stock industry as market centers for the producers of live stock, with convenient, suitable, and efficient locations and facilities thereat or near thereto for the packing industry and the manufacture of live-stock products.

They maintain, however, that no other person or persons, company or companies, are so much concerned in the establishment and in the proper conduct of such yards where needed for or for the building up and increase of live-stock production as are the defendants and others in the meat-packing and live-stock industry, who also from their experience, as well as from their large interests in their own in-

dustry, are qualified for as well as so concerned in the proper conduct of stockyards.

[fol. 50] XIII

As to contracts in restraint of trade: These defendants deny that they, or any or either of them, have entered into or have any unlawful contract or contracts, combination or combinations, or conspiracy or conspiracies to restrain trade or commerce, or to artificially prevent between the defendants to the said petition, or any or either of them, or between these defendants, or any or either of them, or any other or others, or otherwise, competition in the prices for which live stock or meat or meat products or any other commodities are purchased or sold.

These defendants deny that there is any percentage-purchase arrangement between this defendant parent company and the other parent companies, or any or either of them, such as is referred to in the said petition or bill of complaint or otherwise. They deny that there is any such arrangement between this defendant parent company and the other companies, or any or either of them, having as its ultimate or other object the elimination of competition between them in the purchase of live stock or in the sale of dressed meats. They deny that there is any contract or agreement or arrangement or understanding to which these defendants, or any or either of them, are parties or privies for any limitation upon the source of supply, or upon the volume of business, or for limiting the purchase of live stock, or to limit the volume of their dressed-meat products.

They deny that these defendants, or any or either of them, are under any agreement or understanding for or concerning or recognizing certain percentages or proportions as between themselves or any or either of them, and any other defendant or defendants, to which they deem that each or any company was entitled, or that they, these defendants, or any or either of them, have any agreement or understanding to or do so gauge their purchases that annually, or at any time, their respective purchases should approximate actually or substantially the percentage so agreed upon or any percentage; or that as a means of perfecting said alleged arrangement or otherwise, divers percentages, whether varying at different stockyards or otherwise, are agreed upon, or that understandings have been

had that certain of the parent companies should buy in certain yards or should refrain from buying in certain yards, or that in order to prevent such plans from being disarranged by outsiders, or for any other reason, agreements have been made, or any agreement has been made with such or any outsider by which purchases between this parent company, or any or either of these defendants, and the so-called independents, or any or either of them, were placed or were, or were or are to be, upon a percentage basis, whether similar to the above or otherwise.

These defendants further say that as between this parent company and each and all the other parent companies named as defendants herein and all others engaged in the packing industry there is now and at all times in said bill of complaint referred to has been active and unrestrained competition, both in the purchase of live stock and sale of [fol. 51] dressed meats, meat products, and other commodities, and these defendants deny that any apparent or approximate uniformity of percentage of the receipts of live stock purchased annually by this parent company and its subsidiaries evidences or tends to prove any such contract or agreement between this parent company and all or any of the other parent companies as is alleged and referred to in said petition or bill of complaint. This parent company has the purpose and intention of securing in active competition with each and all of the other parent companies and other packers such quality of live stock at the various stock markets that experience over a period of many years has demonstrated it must of necessity have in order to increase its volume of business and to provide for the needs of its trade, and that it may not lose that established position and trade it has taken years to gain.

These defendants say that during the year 1910 an indictment was returned in the district court of the Northern District of Illinois against certain individuals who were then officers of the defendant parent companies, Armour & Company, Swift & Company, and Morris & Company, charging present petition or complaint that, among other acts, such defendants (who were therein alleged to be the principal owners and real managers of said companies) were engaged in a combination in restraint of trade and commerce, which combination was one for eliminating competition between the same defendant parent companies

Armour & Co., Swift & Co., and Morris & Co., in the purchase of cattle and the sale of fresh meat; that, in pursuance of such unlawful agreement, said defendants refrained from competing with each other in the purchase of cattle, and fixed the number of cattle to be purchased by or for each of said companies and agreed upon the amounts to be bid for cattle from day to day and fixed the prices at which fresh beef should be sold. The respective defendants named in said indictment entered a plea of not guilty and, upon trial of said cause, the evidence concerning all and every the acts, transactions, or conduct of business which had been done or carried on by such defendants or any or either of them, and which in the petition or bill of complaint herein are charged to constitute a contract, combination, or conspiracy in restraint of trade, or a monopoly of any part of said trade in or in respect of either the purchases of cattle or the sales of fresh beef—or acts, transactions, or conduct of business like in all respects to those done by these defendants and so charged in said petition or bill of complaint herein as constituting such alleged unlawful restraint of trade or a combination or conspiracy in restraint of trade or a monopoly thereof—was presented, adduced, and exhibited by the Government on said trial as constituting or showing the guilt of the respective defendants named in said indictment and the said cause was, upon the evidence and testimony submitted, and the case made by the Government in support of said indictment, submitted to the jury—the defendants not introducing or offering any evidence, whereupon the jury, having been duly charged, retired and considered, and afterwards returned a verdict of not guilty, and thereupon said verdict was duly recorded and judgment thereon entered.

[fol. 52] And these defendants maintain and charge that the said verdict and the judgment of said district court at Chicago, acquitting said defendants constitute positive and incontrovertible proof and evidence that the acts, transactions, and conduct of their said business by these defendants which are referred to and complained of in the said petition or bill of complaint herein, which are like or similar to the acts, transactions, and conduct of such business in the said indictment referred to, or any or either of them, do not constitute any unlawful restraint of trade or commerce, or any combination or conspiracy in restraint of

trade or commerce, or any monopolizing of or attempt to monopolize any part of such trade or commerce, but are lawful and proper.

These defendants respectively deny that means have been adopted by them, or any or either of them, or to which they or any or either of them, are parties, by which sales to outsiders or so-called independents or others were or are controlled by the parent companies or any or either of them.

These defendants respectively deny that control over the stockyards or stockyard-loan institutions, or terminal railways, or other interests, or any or either of them, has discouraged opposition by either commission men or so-called independent packers or others, or has existed.

XIV

As to control of so-called substitute foods: Defendants admit that in dealing in and handling so-called "substitute foods" or "unrerated lines," these defendants availed themselves (as is alleged in said bill) of the route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them, and that further (as is alleged in said bill) these facilities intended primarily for the sale of meat, were employed, with comparatively no little increase of overhead expense, in the distribution of so-called substitute foods and unrelated commodities, and the defendants were enabled thereby to reach remote spots.

Defendants allege that prior to the Great War, the business of these defendants in canned vegetables, canned and dried fruits, canned fish, rice, beans, and other non-meat foods, was very limited and confined practically to local purchases by a few individual branch houses, usually as an accommodation to some of their customers, but when our country went into war and a survey of the meat food situation of the world made it evident that the United States was to be (as it was) called upon to furnish practically the entire supply of pork product and the major supply of beef for not only our country but our Allies, and everyone was urged to eat as little meat as possible, these defendants looked around for some products to sell to keep their enormous branch-house organization intact and employed (so far as not employed or used in such export and war business), and their cost to sell within reason, and

largely increased these defendants' business in these lines. The reason for it was apparent when, as they allege upon information and belief, 35 per cent of defendants' entire production of meat food in this country was used by the allied Governments.

[fol. 53] Defendants expressly deny, however, that they have at any time entertained the intention or purpose of controlling the Nation's supplies of so-called substitute foods or unrelated products, or any other commodity or commodities, but that on the contrary, their purpose and intention in entering into and continuing in such lines of business and employing their organization and equipment therein, was entirely lawful as a natural and legitimate extension of their business, and moreover, based upon the soundest of economic grounds, to wit, the complete utilization of facilities and distributive organization necessarily required in the handling of meats and meat-food products and employed in connection with the marketing of so-called "substitute foods" and "unrelated lines" without placing upon the consuming public any burden of additional expense for the maintenance thereof.

Defendants further aver that the volume of business transacted in such lines amounts to but a small percentage of the total volume handled by wholesale grocers and other dealers in such commodities, and defendants allege upon information and belief, that during the year 1918 the wholesale grocers throughout the United States handled more than $3,500,000,000 worth of wholesale grocery business, and that the total amount of such business in these lines handled by all the defendants named in said petition or bill of complaint, if combined, would not amount to more than 3 per cent of the entire total for the country; and further, that the amount of business handled by the defendant parent corporation, Armour & Company, during the year 1918 in canned fish, vegetables and sundries, canned and dried fruits, fruits preserves and grape juice amounted to 4.62 per cent, of said defendant, Armour & Company's total volume of business.

Defendants further allege that the increase shown in the volume of business handled in such lines was and is due to the fact that defendants were enabled to secure such business by reducing the cost necessary in connection with marketing such products through complete and efficient

operation and use of their facilities and branch-house space, thereby rendering better and more efficient service both to the producers of said commodities and the consuming public. These defendants deny that the effect of their entry into such lines of business has been that of gradually eliminating competition, but are informed and believe and so allege that during the period 1907-1918, 1,101 wholesale grocers entered the highly competitive business of selling food products and further allege upon information and belief that during the year 1918 there were 3,887 wholesale grocers through the country, and that at present there are over 4,000 wholesale grocers in active compe-tion with the defendants in such trade.

These defendants deny that they have eliminated or lessened, or sought to eliminate or lessen, competition in meat products.

These defendants deny that they have eliminated or lessened or sought to eliminate or lessen competition in so-called substituted foods, or that they have in any way sought to prevent the public from turning to or using substituted foods. They deny that they set about controlling [fol. 54] or have sought to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, and cheese, or any or either of them, or other substitute foods, or that they or any or either of them had any such purpose.

These defendants deny that in their trade and business in so-called substitute foods they fixed or attempted to fix prices so low as to gradually or otherwise eliminate competition or that they fixed prices with any such purpose. They say that their prices were fixed with respect to the normal conditions and facts which govern or affect the market price of such commodities, such as supply and demand, costs and expenses, and fair profit. They maintain that their facilities for conducting such business, their organization, skill, industry, and business experience were all proper and lawful elements in securing trade; and that they had or exercised no unlawful discrimination or advantages in securing such business, and they maintain that any growth or increase in their business obtained in the manner aforesaid, in competition with others, was the result of fair competitive trade. They deny that the securing of trade in such manner is in any sense monopolistic or in

violation of law or public policy; or that trade so secured, as their trade was secured, is or may be a monopoly within the meaning of the law or in fact.

XV

As to the alleged monopolistic attempts of defendants: These defendants respectively deny that they or any or either of them have in any way or at any time attempted to acquire, gain, or get any monopoly of or to monopolize any part of the trade or commerce.

The alleged comparison in the said petition or bill of complaint of the net worth of the defendant parent companies, so far as the same relate to Armour & Company in 1904 and in 1919, is inaccurate and misleading as bearing upon this question.

In the first place, the values of the same properties of this defendant parent company employed in its business in 1904 and 1919 fairly bear no comparison, the normal and proper growth and increase in such values being very large. The value of materials and commodities in an inventory of 1904, or thereabouts, as compared with the value of the same or like commodities of the same amount in 1919 would be very small, or much smaller, and such comparison would be of no value upon the question here under consideration. Almost the entire net profits of the business of this parent company from year to year during the said period of 15 years have gone to increase the capital and have been invested and employed in the extension of its business and its facilities, a very small percentage of such profits having been drawn out, and the added and compounded earnings from such invested profits properly and greatly increased the net worth of said company.

The said company has been during said period a very large borrower of money upon its paper, its actual working [fol. 55] capital at any period of time during said 15 years being thereby very greatly increased, and its earnings include its profits upon such actual employed capital. During said period of 15 years said company further added to its working capital the sum of $50,000,000, or thereabouts, received from the issue and disposition of that amount of its 4½ per cent bonds and was thereby enabled thus to increase its employed and working capital. During said period and in 1918 the said company issued and disposed

of its convertible debentures to the amount of $60,000,000 and was thereby enabled to and did add that amount to its employed capital, and that of such convertible debentures so issued approximately $50,000,000 par value at the date hereof have been converted into the shares of the preferred stock of this parent company and constitute part of its permanent capital. That during the 10 years from 1909 to 1918, inclusive, the sales of said company increased from year to year from and through the extension of its business and trade from $225,000,000 in 1909 to $861,000,000 in 1918; that such increase during the Great War was exceptionally great, owing to conditions produced thereby. That the average net profit upon said sales during said period of 10 years was 2 48/100 per cent; that such rate of net profit was lower than or as low as in any other industry. That the net worth of this defendant company in 1904 was the sum of $45,000,000, or thereabouts, and that the net worth of said company at the end of 1918 was $173,000,000, or thereabouts; so that the net worth of said company at the end of said period of 15 years is less than four times its net worth at the beginning of said period; but in reckoning the value of the said company at the end of 1918 the increase in the values of commodities and property at the close of said period as compared with the values at its beginning amount to a large sum, and this should be taken into consideration in comparing the value of the company at the beginning with its value at the end of said period.

These defendants deny the accuracy of the statement in the said petition of the increase of the net worth of the said parent companies from 1904 to 1919, or the value or effect of the figures stated in said petition with respect thereto as showing or tending to show, and these defendants deny that they show or tend to show any attempts at monopoly on the part of the defendants.

The increase in the amount of the sales of this defendant parent company in the said 15 years, which has been large, has been due and owing to legitimate trade conditions and to the business skill and industry of the defendants and their officers and employees, and the increase and growth of its business thereby produced, and not to any other cause. These defendants deny that the growth, extension, and increase of the business so brought about and resulting is monopolistic or in violation of the Sherman or other anti-

trust acts, or their spirit, or their purpose. These defendants deny that their personal control of any packing houses or slaughtering companies, or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks or other corporations, or in any or either of them, have or had their inception in or [fol. 56] depend for their prosperity upon advantages or privileges growing out of the interlocking or any control of the stockyards or stockyard appurtenances.

These defendants have not information on which to state or base a belief as to the number of corporations or concerns or trade names maintained or controlled by the parent companies or the individual defendants (other than these defendants) or their families, or in which they have a significant or minority or other stock interest or an interest of unknown extent. But these defendants allege that any such facts or statement thereof are and is immaterial to this cause. They respectively deny that there is anything unlawful or against public policy or subject to challenge herein, in or from the fact, if and so far as it is a fact, of the maintenance or control by the parent companies (within their respective charter powers), or the individual defendants or their families, of business corporations or concerns or trade names, or in their holding minority or other stock interests or other interests in any such corporations or concerns, or in their having acquired or organized or maintained them so long as they were useful for their purposes, and when no longer useful dissolving such corporations or concerns. These defendants respectively submit that the allegations of the said petition in that behalf are immaterial. These defendants deny that they, or any or either of them, have acquired or organized, or become or are interested in any concerns in furtherance of any supposed general scheme or plan of action which is unlawful or against public policy or improper.

XVI

As to the extent of industrial control of defendants in so-called substitute foods and unrelated commodities:

Defendants deny that the growth of the control of these defendants, or any or either of them, in all or any of the various industries in said petition referred to, if permitted to continue unchecked, will be complete.

With respect to the business in 1916 of this defendant parent company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies), and grape juice, and the amount thereof in 1916, and in 1918, and the increase in the volume thereof in said two years, these defendants say that this increase in business was lawful and proper, and is to be attributed to the skill and energy and business ability, and proper business organization and facilities with which said business was conducted; and that such increase in business was lawfully accomplished, and without violating any law or public policy. These defendants are unable to state whether any or how much of such increase of business was acquired "at the expense of competitors"; but they say that in all competitive business, the business properly secured by each of the competitors is, within the sense and meaning of such allegation in said petition, acquired at the expense of other competitors; and that such is the proper and lawful operation of competition, which is authoritatively defined to [fol. 57] be the seeking by two or more of trade which only one may secure.

These defendants deny any purpose on their part to secure control of the markets for meat substitute foods; and that their engaging in such trade in competition with hundreds of others who are also engaged in such trade, and the purpose of the defendants to secure, by proper competitive methods, a portion of such trade as might come to them, is lawful and proper. There is no allegation or charge in said petition or bill of complaint nor is there in fact any basis for a charge of the use by these defendants of any unfair methods of competition in such trade.

XVII

These defendants admit that these individual defendants are respectively either officers, directors, agents, or employees of the parent company, Armour & Co., its subsidiaries, and that some of the defendants are large, and other smaller stockholders of said parent company and subsidiaries, or one or the other or both, and others of the defendants are not stockholders in either or in any of said companies, and are only, if at all, connected with the various matters alleged and charged in the said petition or bill of

complaint, as and while they are so connected with one or the other of said companies as officers or employees, and that they are and can only be proper defendants herein or properly subject to the jurisdiction, order, or direction of the court herein, with reference to their action as such officers or employees, while connected with such defendant companies, and not otherwise.

These defendants respectively deny each and every allegation of said petition or bill of complaint not herein admitted; and having answered, they pray to be hence dismissed, etc.

Armour & Co.; Armour & Co. of New Jersey; Armour & Co. of Kentucky; Armour & Co. of Texas; Armour & Co. (Ltd.) of Louisiana; The Anglo-American Provision Co.; The Colorado Packing & Provision Co.; Fowler Packing Co.; Hammond Packing Co.; The New York Butchers' Dressed Meat Co.; Atlantic Hotel Supply Co. (Inc.); J. Ogden Armour; Charles W. Armour; A. Watson Armour; Laurance H. Armour; Arthur Meeker, R. J. Dunham, F. Edson White, George M. Willetts; Frederick W. Croll; George B. Robbins. by Chas. J. Faulkner, Jr., Solicitor for Defendants.

[fol. 58] In Supreme Court of the District of Columbia

[Title omitted]

Answer of Morris Defendants—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations: Morris & Company (Maine), Morris Packing Company (Maine), Morris & Company (New Jersey), Morris & Company, Ltd. (Louisiana), Morris & Company (Pennsylvania), Joseph Stern & Sons, Inc. (New York), Brooklyn Beef & Provision Company, Condit Beef & Provision Company, Corwin-Wilde Company, Chamberlain & Company, Inc., Donnelly & Company, Inc., National Hotel Supply Company, J. M. Wilson & Company, Middletown Beef & Provision Company, Glenn & Anderson Company;

Individuals: Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, Defendants.

These defendants now and at all times hereafter saving unto themselves, and each of them, all manner of benefit and advantage of exception which can or may be had or [fol. 59] taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

Court's Jurisdiction

These defendants admit that Morris & Company of Maine, is engaged in the character of business mentioned and described in the bill of complaint, but say that the bill of complaint does not state facts which show that such business is interstate and foreign commerce.

These defendants deny that they, or any of them, have ever been a party to any contract, combination, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, either in the purchase of their raw material, or in the sale of their finished products; and these defendants expressly and distinctly deny any and all allegations, charges, intimations, or inferences in the bill of complaint contained to the effect that the defendants, or any of them, are in any illegal combination, conspiracy, or contract of any kind or description with the other defendants, or any of them, or with any other person, firm, or corporation, either as to the purchase of their raw material, the sale of their finished product, or otherwise.

These defendants deny that they have in any manner whatsoever, either monopolized, combined or conspired to monopolize, or attempted to monopolize, any portion of the food supply of the Nation; and also deny that they control artificially either the supply or the price of the foods of the Nation; but, on the contrary, these defendants allege that the business of Morris & Company has been, and is being, conducted in accordance with the laws of the land and the rules of good business ethics; that in considering the question of monopoly, the Swift, Armour, Wilson, and Cudahy interests must be considered separately, and not jointly, for each is in actual and active competition with the others and Morris is in actual and active competition with them all.

Object to be Attained

These defendants deny that they have, or ever attempted, any monopoly whatsoever in the interstate trade or commerce of live stock, meat products, or so-called substitute foods; and deny that they have any instrumentalities, facilities, or advantages by which they could build up or perfect any monopoly of meats, meat-food products, or substitutes for meats, or any other article or commodity.

Defendants aver that they have a perfect legal and moral right to deal in the so-called substitute foods or unrelated commodities, and that their dealing in such foods and commodities is sound economically and without question has been and is now of great benefit to the public.

[fol. 60] The Nature of the Business and Method by Which it is Handled

Those defendants admit that the principal business of Morris & Company, of Maine, is the slaughter of live meat animals, the dressing of the carcasses, and the distribution of the dressed meat and the sale of such meat and meat-food products to butchers, who in turn sell the same to the consumers.

These defendants admit that the large packers invented what is commonly known as the refrigerator car. By means of the refrigerator car the dressed meats can now be transported for long distance and delivered to the great consuming centers in the eastern part of this country in good condition. This is in the interest both of the producers of live meat animals and of the consumers of meats and meat-food products. These cars make it possible for the packing houses to be located near the source of production of the live meat animals, which saves shrink and freight to the producer of such live stock and relieves the necessity of shipping anything to the consuming centers excepting meats, the rest of the carcass being manufactured into by-products. In this respect the refrigerator car has been of great benefit to the country as a whole. It has developed the live-stock industry and has cheapened meats to the consumer.

This very advantageous and economical way of transacting this business requires large units, because only with a large volume could the packer afford to own refrigerator

and route cars and the branch houses necessary for the distribution of the meats and meat-food products required in the great consuming centers of this country.

After inventing the refrigerator car the large packers were required to build, own and operate their own cars, because the railroads refused to furnish such cars. These cars have been operated by the packers at a great loss and without any advantage over their competitors, because they pay the same rate on the product shipped in their own cars as that shipped in the cars of others and because the mileage rate paid to the packers for the use of their cars is fixed by the Interstate Commerce Commission.

Stockyards

The stockyard is a market place, where the live meat animals of this country are received, penned, rested, fed, watered, weighed, and sold. The stockyards of this country are absolutely essential not only to the live-stock industry but also in getting meat foods for the people. They are not only in theory but in fact public markets where all who wish to buy or sell have had and may have free access and right to trade. The present high state of efficiency in the stockyards of this country is almost entirely due to the packers. It is infinitely better that the control of these yards should be with people who are interested in the industry rather than with people who are interested only in their dividends.

The stockyards, as alleged in the bill of complaint, have always afforded to the cattle raiser the opportunity to [fol. 61] speedily dispose of his live stock for an immediate cash price. This is because of the financial strength of the packers. In the past this has been done, regardless of panics, the financial condition of the country, or the number of animals offered for sale, which demonstrates that there must be large units in the packing business. If the borrowing power of the large packers is impaired through needless agitation, improper regulation, or unwise legislation, it may be that in the future all of the live stock offered for sale will not continue to be purchased each day for cash.

As alleged in the bill — complaint, packing houses are naturally located at stockyards, because each is dependent upon the other. The stockyards furnish the raw material for the packer, and the packer furnishes a spot cash market

for the live stock offered for sale in the stockyards. Consequently, the packer is directly and vitally interested in building up the yards and the live-stock market at all points where he may have a packing house. Originally many of the smaller yards near the source of production were not efficiently or successfully conducted. This was the great underlying cause that influenced the packer to become interested in such yards.

The ownership of the capital stock of the Stockyards Company cannot possibly exercise any control or influence over the prices obtained for live stock bought and sold in the yards, for the reason the yards are public and free for everybody to bid upon stock offered for sale therein.

It is natural and proper that there should be located at the stockyards commission men skilled in valuing, handling, buying and selling of live stock and to look after the live stock intrusted to their care for sale and disposition at the yards.

The Stockyards Company very properly makes charges for services rendered, as alleged in the bill of complaint, and the Stockyards Company is entitled to fair and reasonable compensation for such services, and this regardless of the ownership of the capital stock of the company. The charges at the various yards in the past have been fair and reasonable for the services rendered.

These defendants, further answering, state that none of the Morris corporation defendants has any interest whatsoever in any of the stockyards of this country. The Morris individual defendants holding interest in the stockyards have been, and are, willing to dispose of such interests, providing a purchaser can be obtained therefor who will pay what said interests are fairly and reasonably worth and who at the same time will insure the future efficient operation of such yards.

Packing-house Sites

There has been no undue or improper tendency to "centralize" the live-stock markets of this country, and it was not on account of any such alleged "tendency" that packing houses were located at the stock yards, and vice versa, as intimated in the bill of complaint. The stockyards could not exist without packing houses, because the packers are

the principal buyers at the yards. Neither could a packing house exist without a stockyard, unless the packer should [fol. 62] buy his raw material in the country direct from the owners of the live stock, which policy, we submit, neither the producers nor the Government would favor.

These defendants deny that the stockyard companies generally own or control all of the packing-house sites at such yards; also deny that the owners of the stockyards are in a position to determine or do determine what packing companies, and how many plants, shall be established at the yards.

Further answering, these defendants say that it is to the decided advantage of the stockyards to have as many packing houses as possible located at such yards. Each additional packing plant builds up the live-stock market for the yards company, as the yards company makes its money out of yardage and feedage charges. Therefore, the greater number of head passing through the yards will necessarily increase the receipts of the stockyard company. It has always been the fixed policy of the stockyard companies to secure additional packing plants at the respective yards. It is not a fact that there has been any discrimination whatever in that regard.

On the contrary, the stockyard companies, regardless of their ownership or control, have always been anxious to get additional packing plants located at their respective stockyards.

Sites for Stockyards Banks and Cattle Loan Companies

These defendants admit that a very large amount of capital is required to finance the raising and preparing for market of live meat animals, upon which the consumers of this country depend for their meat and meat-food products. It is not practicable for the banks of the country generally to loan this money, taking chattel mortgages on the cattle as security, which is ordinarily the only security offered, because of the character of security and the distinct location of the banks therefrom. Accordingly there are a great many cattle loan companies in this country which maintain offices and representatives in the locality of the cattle given

in security for loans, and thus these cattle loan companies are in a position to keep in touch with the loans and inspect the security from time to time. The majority of these cattle loan companies have no packer interest in them whatsoever.

The mode of procedure is for the cattle loan companies to take the notes of the cattlemen, secured by chattel mortgages on the cattle, and then the cattle loan companies indorse and guarantee this paper to the banks scattered all over the country. Most of this paper goes to eastern banks. The banks take and pass this paper out to their customers, not upon the security of the mortgaged cattle, which are generally at a great distance from the banks, but upon the indorsement of the cattle loan company. For the inspection of the security and guarantee of the paper the cattle loan company gets a reasonable commission, generally the difference between the interest which the borrower pays and the interest retained by the bank buying the paper. In this way it has been possible for the live-stock men of this country to borrow the required money to prepare the live [fol. 63] stock for market, and the cattle loan company has in this way been of great benefit both to the producer and the consumer.

These defendants further state that the cattle loan companies controlled by the big packers have never required the live-stock man to market his live stock except when same is actually prepared and ready for the market. In not a single instance has the packer—controlled cattle loan companies—required prior marketing of live stock, even in case of drouths or other extremity beyond human control, unless, and except, it was in the best interest of the owner of such live stock. The packers, in fact, have had no advantage whatever through such cattle loan companies, except through the encouragement of production. The live-stock men have not to any extent been damaged by the interest of the packers in such cattle loan companies, but, on the contrary, have been greatly benefited.

It is in the interest of the live-stock men and of everybody else that these cattle loan companies and live-stock banks be located at, or near, the principal stockyards of this country.

These defendants deny that the owners of stockyard companies in which they, or any of them, have any interest,

have, at any time or place, designated how many, and which, banks or loan companies may establish themselves at the yards. But, on the contrary, there is in fact actual and active competition between the banks and cattle loan companies at all of the large stockyards of this country.

Morris & Company has no stock or other interest in any bank or cattle loan company.

Rendering Plants

In the shipment of live-meat animals to the market, naturally some of them die, either en route or after reaching the yards. There are not enough of these dead animals at any one stockyard to justify the investment, overhead, and expense incident to the operation of a rendering company. Accordingly, the Rendering Company that handles the dead animals at any one of the stockyards must and does have additional business, which is generally obtained in the way of dead animals collected from the streets of the city, under city contract. When a company has such a city contract it is enabled to handle the dead animals at the stockyards on better terms and to better advantage for the producers than otherwise could be done.

From the standpoint of health and sanitation these dead animals must be handled very expeditiously and on that account some one must be charged with the responsibility of their very prompt collection and disposition.

These defendants deny that there is any monopoly at any of the public stockyards of this country for the handling of dead animals at said yards, but state the fact to be that said animals are handled to the best possible advantage and in the interest of the owners of such animals.

Morris & Company has no stock or other interest in any rendering company.

Commission Men's Office Space

[fol. 64] It is advisable for the commission men and traders at the stockyards to have offices in or near the yards, as alleged in the bill of complaint, otherwise they could not expeditiously transact the business at the yards for the producers of this country. In the orderly and efficient handling of live stock at the yards it is necessary to allot certain pens to the commission men in order to avoid

confusion and delay. The renting of offices and the allotting of pens to commission men at the various stockyards have been done to the interest of the producers and of all concerned, and nothing is averred in the bill of complaint to the contrary. Generally the commission men and traders at the yards have a committee of their own to make these allotments of pens, as the interests of the yards and the commission men are absolutely mutual in this regard.

Terminal Railways

These defendants state that it is in the interest of the live-stock producers that these terminal railways should be owned and operated independent of any one railroad system, because otherwise the railroad company controlling such terminals would use same to its own advantage and in the interest of its shippers and against the interest of shippers on other railroads. These stockyard terminals were originally brought into existence so that all shippers would be treated alike and so that there would be no discrimination in the handling of live stock into and at such yards. It is of the greatest importance that all live stock should reach the unloading chutes and be unloaded as soon as possible, so as to be rested, fed, watered, and prepared for the early market.

While the bill of complaint does not charge the exercise of any discrimination on the part of the terminal railways at the different stockyards, it claims they have such power. These defendants state most positively that these terminal companies have not discriminated in the matter of sidings, spurs, or other accommodations which may be required by a packing house, and there has been no discrimination along this line against any packer or buyer in any manner whatsoever.

Market Papers and Journals

As stated in the bill of complaint, the cattle raiser requires "full, accurate, and unbiased reports of the demand for live stock, the prices prevailing and the character and kind of stock required," and such information is furnished by the market papers and journals specializing in intelligence of this kind. In years past the daily press printed more extensive, but still inadequate, reports than at the

present time, the increased cost of print paper and the reduction in size forcing a curtailment of these reports. The burden of increased cost of production bears more heavily on the small publisher than the large. This situation en- [fol. 65] dangers the future of these publications, and care should be taken that these market papers and journals are not required to -bandan the field altogether.

Whatever financial aid or assistance which the packers have given these publications in the past has been done in the interest of the market, and the producers got the benefits thereof. No market paper or journal could successfully falsify either prices or conditions. To do so would be to commit financial suicide, as its integrity and accuracy are the sole measures of its value to its subscribers.

These defendants have no advantage of any kind either over the producer of live stock or the purchaser of their finished products by or through the publication of market papers or journals. The fact is that both the people from whom the packers buy their raw material and the people to whom they sell their product are fully and accurately advised concerning market conditions.

These defendants deny that they, or any of them, own any interest whatever in any of the market papers or journals at any of the stockyards in this country.

Alleged Results from Control of Stockyards

These defendants deny that the control of the stockyards and of the other facilities at the yards would cause the results claimed in the bill of complaint, and with reference thereto would state:

(a) If the profits made by the stockyard company are reasonable (and there is no charge in the bill of complaint that they are unrea-onable) then it is wholly an- absolutely immaterial, both to the producer of live stock and the consumer of meat, who owns the capital stock in the stockyards so far as profits are concerned. Packer interest in stockyards does not add 1 cent to the cost of the meat to the consuming public. On the contrary, if packer control of the yards means greater efficiency and saving of cost, it is to that extent a saving to the consumer. In other words, the elimination of the packers from interest in the yards would eliminate neither the yards nor the reasonable

charges which the yards company is justified in making for its services.

(b) There is no power in a stockyard company to grant a monopoly either to banks, cattle loan institutions, rendering plants, or concerns supplying food for live stock and others, and no such monopoly has been granted or attempted in the past.

(c) The stockyard companies have no power to prevent the establishment of new packing plants at the respective yards or to hamper the growth of those in existence; but, on the contrary, it is to the direct and best interest of the stockyard company to induce the location of additional packing plants and to give such service as would encourage the growth of those in existence. The fact is that the building of additional packing plants has been encouraged by all of the yards.

(d) The present stockyard companies can not prevent the development and limit the number of new markets or centralize and restrict business to the present stockyards. The Morris interests have in the past established now markets [fol. 66] in direct competition with the other large packers. In 1921, Morris built a packing plant and stockyards at Oklahoma City, in direct competition with Swift and Armour at Fort Worth and with Cudahy and Dold at Wichita, being less than 200 miles from each point, and even to the present time Morris must buy live meat animals in the leading markets of this country to sustain and keep its Oklahoma City packing plant in operation. To illustrate: Morris & Company has purchased as high as 40,000 head of cattle in one year at the stock yards in Fort Worth, controlled by Armour and Swift. These cattle were purchased for slaughter at its packing plant in Oklahoma City, operated in active competition with the Swift and Armour plants at Fort Worth.

The South needs packer development and diversified industry, and especially in those sections where cotton can no longer be raised on account of the boll weevil. The climate and the soil both favor the raising of meat animals, and the larger packers have been developing this section both with packing plants and stockyards. If the packer should be denied the privilege of being interested in stockyards,

then this development, so much needed and desired, may be arrested and defeated.

(e) There has never been any exclusive access to information concerning receipts and sales of live stock and its disposition, either to the producer, the packer, or anyone else. This information has always been and is public and accessible to everybody alike.

The Bureau of Markets, under the Department of Agriculture, is maintained for the purpose of obtaining, and disseminating this species of information to all concerned.

Branch Houses

A branch house is primarily a market, or sales place, for the disposition of packing-house products at a distance from the packing plant. Branch houses are also frequently used for manufacturing purposes, such as the smoking of hams and bacon, and the making of sausage and other similar products; the consuming public thus gets the most wholesome product.

The branch house must have refrigeration, for meat is a very highly perishable product. Before we had refrigeration, beef was shipped to the eastern markets in box cars, when the weather was cold enough, and sold at auction on arrival. This costly, insanitary, wasteful, and extravagant method was soon discarded when the big packers invented and brought into use the refrigerator cars and the branch house.

The branch house is ordinarily located on a switch track near the business center of the city, and is managed by experienced men who know the wants of their particular community. At first the branch house was a crude affair, but the modern branch house costs from $75,000 to $300,000.

The branch house is in the interest of both the producer and consumer, because, without the distributing facilities of the big packers, of which the branch house is a part, congestion would take place at the packing plant and the packer [fol. 67] could not buy the live meat animals shipped to the yards. Consequently, it is in the interest of the producer that the packers have the proper marketing facilities, so that the packing plant will not be congested with the finished product, and so that the packer, by not being a spasmodic

buyer, can at all seasons of the year pay a fair price for the live meat animals offered for sale on the market. The branch house not only serves this purpose for the producer, but is also the source through which the butcher at all seasons of the year gets his meat and in turn is able to continually supply the consuming public.

With the large packing plants located near the source of production, as they should be (thus saving the producer shrink and freight), the branch house is an absolute essential part of the distributing system of the packer. Meat is a highly perishable product and can only be kept in good condition for a limited number of days, even with refrigeration. Not only is the refrigerator car and the branch house an essential in the distributing system of the packers, but these facilities keep down the waste of meat to a minimum, and prevent the increase in price which waste would necessarily entail.

These defendants are not advised as to the number of branch houses maintained by the defendant parent companies, as alleged in the bill of complaint, but these defendants state the fact to be that Morris established its first branch houses in the east in the year 1885, and it now has 186 branch houses, with 2,850 employees.

These defendants further state that the distributing system of the larger packers, including refrigerator cars and branch houses, does not give to them any monopoly in the sale of meats in the great consuming centers, or anywhere else. To illustrate the situation in that regard it may be stated that in New York City, in addition to the defendants, there are more than 75 wholesale dealers and slaughterers, and in Boston, besides the defendants, there are 13 large wholesale dealers and 15 houses that buy from local slaughterers. This is characteristic of all the large cities in the great consuming section along the Atlantic seaboard.

The meat sold through the branch houses must bear the expense of shipment from the packing plant to the branch house, in many instances being a great distance and a large expense. This meat comes in competition with the meat of numberless local slaughterers in all of the cities of this country, which later meat has no expense whatever for transportation and is also free of the expense incident to Federal inspection. Consequently, in the matter of competition the meat of the big packers sold through branch

houses is at a decided disadvantage. The branch houses are maintained simply as a matter of necessity and because no better distributing system has even been suggested or adopted for the transportation of meat from the large packing-house centers, which should be near the source of production, to the great consuming centers, which are largely along the Atlantic seaboard.

These defendants further state that perishable product like meat can not be handled through some common freight house, like farming implements, clothing, boots, and shoes, or other staple articles, which do not have to be sold quickly in order to prevent deterioration or complete loss.

[fol. 68] Route Cars

As stated in the bill of complaint, route cars supplement the branch houses and serve the purpose of reaching the small communities where the trade is not sufficiently large to justify an investment in a branch house.

The route car does more than this, it brings to these smaller communities the Federal inspected, sanitary, and finely prepared products of the modern packing house. Through the efficiency of the large packers and the utilization by them of all by-products, these meats and meat food products can be supplied to these small distant communities at less cost than they are supplied through the local butcher. At the same time the Department of Agriculture has determined and reported "that farmers receive smaller relative returns from cattle marketed locally than from those that are shipped to centralized markets."

These defendants are not advised as to the number of route cars operated by the parent companies or the percentage which that number bears to the total number operated in the packing industry. These defendants state that Morris & Company operates 265 car routes in this country, reaching 5,074 towns, and the business done from these route cars comes in direct and active competition not only with the products of the large packers, but also with the local butchers and slaughterers, many of whom are not Federal inspected and have no expense of shipment whatever. The percentage of route cars operated by the five large packers as compared with the number of route cars operated by the packing industry as a whole, does not begin to describe the amount of competition which the business done

from these route cars comes in contact with. If these route cars were not in existence the strong probability is that the local butchers and slaughterers would increase the price of meat to the consuming public. These defendants maintain that these route cars are now operated, not only within the law and without any undue or improper advantage to the packers, but they are in fact operated to the great benefit and advantage of the consuming public in the towns and communities reached by them.

Auto Trucks

These defendants do not maintain any auto trucks that serve as route cars, but insist that the consuming public is entitled to the most efficient and best means of distribution of meats and meat-food products that can be devised.

Cold-storage Warehouses

The bill of complaint alleges that the cold-storage warehouse enables the packer to extend the volume of his business. Anything that extends volume in the meat-packing business is in the interest of the public generally, both producer and consumer, because a big volume enables the packer to utilize the by-products to the fullest possible ex- [fol. 69] tent. That is why the big packer has so many departments. That is why the big packer has a large force of chemists and highly trained specialists who are constantly endeavoring to produce more and more by-products from the offal, the effect of which is to bring down the price of meats for human consumption. That is one important reason why this country must continue to have big units in the packing industry.

Generally speaking, the cold-storage warehouse enables full production in seasons of plenty to be carried over to seasons of scarcity; thus stabilizing the prices for the producer in seasons of plenty and at the same time making the prices lower to the consumer in seasons of scarcity.

The chief function of the cold-storage warehouse in the meat-packing business is to preserve the surplus meats until they can be advantageously marketed, which is in the interest of both the producer and the consumer. At all times there are extraordinary runs of cattle, hogs or sheep at the various yards. Sometimes this is due to usual and normal

causes, such as the end of the grass season for cattle, or in the fall for hogs; and at other times it is due to something unusual and out of the ordinary, as a drought in the Southwest or a cholera scare among the hog feeders. Under such circumstances if there were no cold storage warehouses to take care of this temporary oversupply this live stock could not be marketed and would represent a clean waste in the food supply of the Nation, which in turn would enhance the price of meats to the consumer, not to mention the loss to the producer.

If it had not been for the cold-storage warehouses along the Atlantic seaboard our armies and the armies of our associates could not have been fed with American meat during the war, as these warehouses enabled us to store the meats at places reasonably accessible to seaboard while waiting for the ships.

Morris & Company owns but one cold-storage warehouse, which is located in Chicago. This warehouse has a capacity of about 50,000,000 pounds, a large part of which is used for meats in process of curing. It is necessary for the company to store almost that amount in outside public warehouses, for which Morris & Company pays the regular published rates regulated by the various State utility commissions where the different warehouses may be located. Morris & Company has never had, or exercised, any control over public warehouses.

These defendants deny that they have any possible advantage over their competitors through the cold-storage warehouse; also deny that the cold-storage warehouse has ever been used by them, or any of them, as a means to control the price of meats and so-called substitute foods.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

These defendants deny that they, or any of them, purchased or acquired any interest whatsoever in stockyards [fol. 70] or the facilities pertaining thereto, the stock yards terminal railways or market papers in order to repress and discourage the development of other packers and slaughterhouses or to control the shipments of meat to the various markets.

These defendants state that there are more packers in competition with them than ever before in the history of the

industry; that there are more than 300 meat packers doing an interstate business under Federal inspection, and there are more than 1,000 local slaughterers doing an intrastate business, all in keen and active competition with these defendants.

These defendants deny that they, or any of them, ever purchased or acquired any interest whatever in stockyards, terminal facilities, or market papers by concert of action and pursuant to a common understanding with the other defendants in this case, or with any other person or persons; and these defendants have never acquiesced in the acquisition of interest in or control over stockyards by any of the other defendants.

These defendants deny that, in pursuance of a common purpose, plan, and desire, outside investors and packers have gradually been forced out as dominating factors, both in the ownership and management of the most of the important stockyards, and have been replaced by the parent companies or their representatives. The fact is that none of the Morris corporations have any capital stock or other interest whatsoever in any stockyard in this country. The largest stockyard in the country—Chicago—is not controlled by the packers, but, on the contrary, only one individual packer has any interest therein, and that but 19 per cent. More than two-thirds of the capital stock of the second largest stockyard in the country—Kansas City—is owned by people wholly unconnected with the packing industry, and the capital stock of this company is dealt in very extensively on the stock exchange, and any person is privileged to buy a substantial interest therein. Large blocks of the capital stock of the Omaha yards, the third largest stockyard in this country, are owned by people wholly unconnected with the packing industry. More than one-third of the capital stock of the East St. Louis yards, the fourth in size, is owned by people who are not connected with the packing industry. But the smaller yards, near the source of production, like the Denver, Fort Worth, Oklahoma City, and Wichita yards, which can scarcely support two packers, and which render the great service to the producers, relieving them of both freight and shrink, are not so attractive to the investing public, and these are the yards which have been built up and are controlled by the packers.

These defendants further state that the interests acquired

by the packers in the various stockyards of this country were generally acquired through necessity and in order that such yards might be built up and maintained efficiently, and this packer interest in these yards has resulted generally in the extension and building up of the market.

These defendants deny that they, or any of them, ever acquired any interest in any stockyard, stockyard terminal, [fol. 71] or stockyard paper through any of the means or methods set out and described in the bill of complaint.

These defendants deny that the Morris parent company, charged in the bill of complaint, has granted any exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which these defendants, or any of them, were interested; also deny that they employed the powers and privileges more specifically set forth and discussed in the bill of complaint under the heading "Nature of the business and method by which it is conducted."

These defendants expressly and distinctly deny that they, or any of them, have done any of the things alleged in the bill of complaint for the purpose, or with the effect, of discouraging and suppressing the establishment of packing establishments or dwarfing the growth of any packing company whatsoever.

These defendants further deny that they, or any of them, have attempted to monopolize the meat industry of the country or to artificially control the ultimate price which the consumer pays for meat or meat products.

Contracts in Restraint of Trade

Defendants expressly and distinctly deny each and every allegation and averment in the bill of complaint under this heading.

Further answering this charge of an agreement as to percentage of purchase, these defendants deny that they, or any of them, have any agreement or understanding whatsoever with any person, firm, or corporation concerning or affecting its purchase of live stock, and, in that connection, state most positively that the business of Morris & Company is regulated and controlled entirely and absolutely by the law of supply and demand, and that its purchases of live stock are not regulated or controlled, to any extent whatever, by

the purchases of Swift & Company, Armour & Company, Wilson & Company, the Cudahy Packing Company, or any or either of them, or of any other person, firm, or corporation.

These defendants state that there is not the uniformity of purchase between the parent companies that is intimated in the bill of complaint, but an approximate uniformity of purchase between these companies is of no particular significance, as these businesses have been many years in developing, and each company now has its regular organization, its ordinary and usual trade, its plant capacity, and distributing system. Moreover, there has been a very determined fight for several years from certain quarters to hold these companies to their present volume and not permit them to grow or extend, if not to disintegrate them altogether. All of this would tend to bring about even a greater uniformity of purchase than the law of general average.

The uniformity appears closer than it actually is because of the tremendous volume incident to the packing business. In the figures of percentage the difference of 1 per cent to [fol. 72] the average mind would not appear great, and yet that 1 per cent may represent several hundred thousand head of cattle. The difference of 1 per cent in the Morris buy between the years 1915 and 1917, which is conceded by the Government, represents 76,000 cattle, which is approximately 10 weeks' kill in Chicago or 3 weeks' kill at all of the Morris plants.

Further answering, these defendants state that there is much more uniformity of purchase by the leading interests in any stabilized basic industry in this country having competition than there is in the packing industry, and that this alleged uniformity of purchase in the packing industry, whatever uniformity there may be, is due to healthy conditions and sound economic laws, except that brought about by forces and influences outside of the packing industry itself.

This identical charge of uniformity of purchase was made by the Government in a criminal case instituted by the Government in Chicago against certain of the officers of three of the defendant parent companies, and after hearing the testimony for several months, this precise question being gone into very fully, the jury, in March, 1912, returned a verdict in favor of the defendants, upon the testimony

of the Government alone. The judgment based upon that verdict necessarily means that there was no undue uniformity of purchase by the packers and is, in fact, an adjudication on that point.

This Government suit of 1912 was on the theory that three of the parent companies in this case maintained a certain percentage as to buy of live stock, while this present suit is against five parent companies and their officers, and yet there is no allegation in the bill of complaint as to how, when, or why the Government changed its position from three to five or when the two additional parent companies became parties to the present alleged agreement, or how, or to what extent, the two additional companies have affected the alleged percentage.

These defendants further state that, during the war, the Government ordered and directed the packers of the country generally, including the defendants, to maintain their respective volumes of business. The Government can not consistently order a certain thing done and then afterwards complain of its being done. Consequently, the allegations in the bill of complaint do not set up any facts constituting a violation of any law on this point within three years next preceding the filing of the bill of complaint.

Control of Substitute Foods

The statement in the bill of complaint that defendants had eliminated competition in meat products is wholly without foundation in fact, as is also the statement that the packers commenced the handling of foods and products ordinarily handled by wholesale grocers and produce dealers in order to keep the price of meats from advancing out of proportion to these other foods.

The fact is, that Morris & Company largely confined its activities to the production and handling of meat food products until the latter part of 1917. At that time the cost of live meat animals, labor, taxes, supplies, and everything [fol. 73] entering into meat had advanced tremendously. The irregular receipts of cattle, sheep, and hogs due to shortage of live stock caused irregular markets. There are always slack seasons in the sale of the meats. Morris & Company had fixed an overhead for the maintenance of its branch houses and the distributing system. During the war the meat that was furnished to our Government and the

Governments of our associates did not pass through the branch houses, and as the Government discouraged the eating of meat by the civilian population in order that the armies and navies might be properly fed, the employees in the branch houses were not fully engaged and had plenty of time to handle additional lines. In order to meet these conditions and to keep down the expense of this distributing system, Morris & Company began the handling of canned fruits and vegetables. The company had the branch houses, the sales organization, and delivery equipment, and expenses were going on whether the meat business was active or quiet. It was, therefore, decided that it was good business to keep all of these men and the equipment busy the year around, and in order to do so canned fruits and vegetables were added to the Morris lines.

In addition to the utilization of the entire organization to its full capacity, these added lines enabled Morris & Company to make more frequent turnovers, smaller sales to the retailer, who ordered more frequently, reduced his investment in stock and gave the consumer a better product. Morris & Company was often encouraged by retailers to add to its line as they appreciated the service and could save time in both purchasing and delivery.

In the handling of groceries Morris & Company had no advantage whatever in freight rates over its competitors and the only advantage which the packer had in handling groceries and so-called unrelated lines was the advantage due to his efficiency, and it is perfectly legitimate and proper that the consuming public should receive the benefit of such legitimate advantage.

These defendants deny that Morris & Company fixed prices so low as to gradually eliminate competition and to exterminate the produce dealer and wholesale grocer. It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Company entered this field in the latter part of 1917 has increased more than 10 per cent. This conclusively demonstrates that, instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business.

The entire business done by Morris & Company in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2 per

cent of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3 per cent of the entire volume transacted by the wholesale grocers and packers.

In view of the substantial growth of the business of the wholesale grocers during the last few years, the statement in the bill of complaint to the effect that, unless prevented [fol. 74] by a decree of this court, the defendants will, within the compass of a few years, control the quality and price of each article of food found on the American table, is nothing short of the ridiculous. On the contrary, these defendants insist that it is in the best interest of the consuming public that it should get the benefit of the distributing system and added competition of the packers in these so-called unrelated lines. To eliminate the packers from this field would merely mean to cut down competition to that extent, to which the consuming public is entitled. The handling of groceries and foods other than meats by the packers has resulted in a better product and a saving of foods through wastage and destruction. While the wholesale grocer has his place in the economic scheme of this country, still it would be to the interest of the people generally if the efficient competition of the packers would force the wholesale grocer to revise his business methods and cut down his costs.

All of the profits made by Morris & Company in the handling of these so-called unrelated lines finally went into the packing house profits and, to that extent, enabled the packer to sell meat at a lower price. Consequently, the elimination of the packers from these so-called unrelated lines would naturally result either in lower prices for the live stock or higher prices for meats.

Financial Growth, Present Net Worth, and Volume of Business

These defendants are not advised concerning the alleged growth, profits, sales, or net worth of Swift, Armour, Wilson, and Cudahy between the years 1904 and 1919, but these defendants do state that the total annual profits of Morris & Company, from every source whatsoever, for this period of 16 years was but 8.41 per cent on the capital and surplus

invested. Out of these profits dividends have been paid to the stockholders representing but 1.71 per cent on the capital invested. The balance of profits, to wit, 6.70 per cent on the capital invested, has been added to surplus.

A table showing the capital stock, the surplus, and the profits of, and the dividends paid by, Morris & Company for each of the years 1904 to 1919, both inclusive, is as follows:

Year	Capital	Surplus	Profits	Dividend paid
1904	$3,000,000.00	$12,663,983.17	$1,656,599.39	$240,000.00
1905	3,000,000.00	14,080,582.56	2,023,643.80	240,000.00
1906	3,000,000.00	15,864,226.26	1,796,618.65	240,000.00
1907	3,000,000.00	17,420,844.91	2,251,673.39	1,800,000.00
1908	3,000,000.00	17,872,518.30	2,650,389.35	315,000.00
1909	3,000,000.00	20,207,907.65	2,069,578.36	450,000.00
1910	3,000,000.00	21,827,486.01	746,194.96	435,000.00
1911	3,000,000.00	22,138,680.97	1,034,851.64	180,000.00
1912	3,000,000.00	22,993,532.61	1,812,653.49	180,000.00
1913	3,000,000.00	24,626,186.10	1,916,996.94	360,000.00
1914	3,000,000.00	26,183,183.04	2,205,672.69	450,000.00
1915	3,000,000.00	27,838,855.73	2,321,414.78	750,000.00
1916	3,000,000.00	29,510,270.51	3,632,212.90	1,000,000.00
1917	3,000,000.00	32,142,483.41	5,301,071.47	150,000.00
1918	3,000,000.00	37,293,554.88	4,217,858.84	300,000.00
1919	3,000,000.00	41,211,413.72	703,641.00	300,000.00

[fol. 75] The profit on each dollar of sales by Morris & Company for the years 1910 to 1919, both inclusive, is as follows:

Year	Profit on each dollar of sales
1910	$0.0061
1911	.0086
1912	.0136
1913	.0117
1914	.0139
1915	.0129
1916	.0170
1917	.0181
1918	.0106
1919	.0016

These defendants are in no way connected with Swift, Armour, Wilson, or Cudahy and are not in a position to state as to their profits, but these defendants are advised and verily believe that the profits made by the five big packers have been substantially less than the profits made by any other large basic industry in this country.

These defendants deny that the Government has not ascertained all of the profits made by the defendants and state the fact to be that departments and representatives of the Government have been through their books and records

very thoroughly and for many years, and are familiar therewith, and, under these circumstances, these defendants state that the petitioner is not justified in alleging that there are profits which have not been ascertained.

Number of Controlled Companies

Unfortunately, the allegations in the bill of complaint under this heading are vague, indefinite and uncertain. These defendants are not advised as to the number of corporations in which the Swift, Armour, Wilson, and Cudahy companies are interested; nor are these defendants advised as to what is included in the word "families" under the averment in this regard. These defendants do say that the Morris organization is interested, comparatively, in very few corporations and if the petitioner would specifically allege or set out the names of the corporations in which it is claimed that any of the Morris defendants are interested, then these defendants would answer such an allegation with certainty and precision.

These defendants are absolutely certain, however, that the Morris organization has no greater number of corporations than is ordinarily identified with a business having the volume and magnitude of Morris & Company. The corporations which Morris & Company do own or control were acquired, and are held and controlled, legally and not in violation of any law.

[fol. 76] Extent of Industrial Control in the Substitute Foods and Unrelated Commodities

It would not be an enormous undertaking to determine the degree of control exercised by the defendants in all of the various activities mentioned in the bill of complaint, and there is positively no truth in the statement that, if the growth is permitted to continue unchecked, it will be complete within a few years. The fact is, that it is now within the complete power of the petitioner to ascertain and determine, if that has not already been done, just to what extent Morris & Company is engaged in any of these unrelated lines.

Of course, these defendants are not familiar with the alleged growth of the business of Armour & Company in these unrelated lines, as alleged in the bill of complaint.

Morris & Company disclaims any purpose whatever on its part to secure control of the market for so-called meat substitute foods, or any portion thereof.

The parent companies do not control either the output or the price of products marketed through their distributing facilities, because they must pay exactly the same freight rate on goods shipped through these facilities as if they were shipped otherwise.

Individual Defendants

The individual defendants are all members of the board of directors of Morris & Company, of Maine; Edward Morris is president, Nelson Morris is chairman of the board, L. H. Heymann is vice-president, C. M. Macfarlane is vice president and treasurer, and H. A. Timmins is secretary and assistant treasurer of Morris & Company of Maine.

The defendant, Nelson Morris, was not on the payroll of Morris & Company between March 1, 1918, and June 11, 1919, and took no part whatever in the affairs of the company during that time.

There is no foundation in fact for the statements in the bill of complaint that there is any effort or attempt on the part of these individual defendants, either for themselves, or for others, to control the meat products or so-called substitute foods in the United States.

Corporation Defendants

The history of the growth and development of the Morris organization is merely the recital of thrift, economy, efficiency, strict personal attention to business and the leaving of the earnings in the business to accumulate; in another form, it is the tale of interest compounded. This organization has been three generations in the making. Nelson Morris, grandfather of the present heads of the business, was the original founder. More than 60 years ago he started in business as a sheep driver in the Chicago yards with a total capital of 50 cents. He became the largest feeder of cattle in the world, feeding as high as 60,000 head at one time, making big money in selling his cattle to the packers, and the money so made went into the packing business. The [fol. 77] capital stock of Morris & Company has always been closely held, and its legitimate growth, with increasing values in this country, can thus be easily understood.

The original corporate organization was the Fairbank Canning Company, but the business was in fact conducted as a partnership by Nelson Morris and his sons under the firm name of Nelson Morris & Company until the present parent company, Morris & Company, of Maine, was organized.

It can be asserted with complete confidence that even during the period of business development in this new country of unparalled natural resources and advantages, that the packing industry was far above the average in business morals, and that the industry continues to be conducted with honesty of purpose and scrupulous regard for the laws of the country and the equities of the producer and consumer.

There is a strong disposition in certain quarters of this country to have the Government interfere with private business by the creation of bureaus to control and run the business, which necessarily mean inefficiency, politics, and added cost to the consuming public. This policy in its developed state would lead to the paternalism and finally Government operation, which would mean the destruction of private initiative and personal ambition, which has been the genius of American business.

In this country of shifting extremes the preservation of equal opportunity to all American youth, such as that possessed by the founder of the Morris organization, is of vastly more importance than everything else involved in this litigation.

These defendants state that Morris & Company, organized under the laws of the State of Maine on October 16, 1903, with a capital stock of three million dollars ($3,000,000), is the company designated in the bill of complaint as the parent company in the Morris group, and said company has its principal place of business in the city of Chicago, Ill., and owns and operates a packing house in said city and also in the cities of East St. Louis, Ill.; St. Joseph, Mo.; Kansas City, Kans.; Omaha, Nebr.; and Oklahoma City, Okla. Its principal business is the purchase and slaughter of live meat animals and the sale of the finished products thereof; the said company, through its subsidiaries, maintaining selling branches in the principal cities of the United States.

The Morris subsidiary defendants mentioned in said bill of complaint are as follows:

The Morris Packing Company was organized under the laws of the State of Maine on September 28, 1912, with a capital stock of twenty-five thousand dollars ($25,000) and conducts branch houses at Little Rock and Helena, in the State of Arkansas, selling Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the New Jersey corporation, was organized under the laws of New Jersey on December 27, 1902, and has a capital stock of one hundred thousand dollars ($100,000) and operates the selling branches for the Maine corporation in the United States, with the exception of those branches in the States of Texas, Louisiana, Penn- [fol. 78] sylvania, Maine, and Arkansas, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Louisiana corporation, was organized under the laws of the State of Louisiana on October 11, 1910, with a capital stock of fifty thousand dollars ($50,000), and conducts the Morris selling branches in the States of Louisiana and Texas, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Pennsylvania corporation, was organized under the laws of the State of Pennsylvania, on October 6, 1910, with a capital stock of fifty thousand dollars ($50,000) and operates the Morris selling branches in the State of Pennsylvania, all of the stock of said company being owned by Morris & Company, of Maine.

Joseph Stern & Sons (Inc.) was incorporated under the laws of the State of New York in the spring of 1910, and has a present capital stock of two million dollars ($2,000,000) and now operates a meat packing plant in the city of New York, all of the capital stock being held by Morris & Company, of Maine.

The Brooklyn Beef & Provision Company was incorporated under the laws of the State of New York on September 30, 1912, with a capital stock of five thousand dollars ($5,000) and merely operates a branch house in the city of Brooklyn, N. Y., selling the Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

The Condit Beef & Provision Company is a corporation incorporated under the laws of the State of New Jersey in

July, 1909, with a capital stock of five thousand dollars ($5,000) and merely operates a branch house in East Orange, N. J., selling the Morris products, all of the capital stock being held by Morris & Company, of Maine.

The Corwin-Wilde Company was incorporated under the laws of the State of Massachusetts on March 29, 1893, with a capital stock of fifty thousand dollars ($50,000) and merely operates a branch house in the city of Boston, Mass., selling the Morris products, all of the stock being held by Morris & Company, of Maine.

Donnelly & Company (Inc.) was incorporated under the laws of the State of Massachusetts in December, 1912, with a capital stock of fifty thousand dollars ($50,000) and operates a branch house in the city of Boston, Mass., selling the Morris products, all of the capital stock of said company being held by Morris & Company, of Maine.

The National Hotel Supply Company was incorporated under the laws of the State of Illinois on March 19, 1901, with a capital stock of five thousand dollars ($5,000) and operates certain branch houses in the cities of New York and Philadelphia, selling the Morris products, all of the stock of said company being held by Morris & Company, of Maine.

Chamberlain & Company (Inc.) was incorporated under the laws of the State of Massachusetts on February 27, 1907, and has a present capital stock of two hundred thousand dollars ($200,000) and operates certain manufacturing and selling branches in the city of Boston, Mass., one thousand three hundred and thirty-four (1,334) shares [fol. 79] of the capital stock of said company being owned by Morris & Company, of Maine, the rest of said capital stock being owned by parties wholly unconnected with the Morris organization.

J. M. Wilson & Company was incorporated under the laws of the State of Massachusetts on December 23, 1915, with a capital stock of twelve thousand dollars ($12,000), and this company merely operates a wholesale meat market in Dover, N. H., Morris & Company, of Maine, owning capital stock of the par value of nine thousand dollars ($9,000), and the rest of the capital stock of said company being owned by parties wholly unconnected with the Morris organization.

The Middletown Beef & Provision Company was incorporated under the laws of the State of Massachusetts on January 7, 1914, with a capital stock of twelve thousand dollars ($12,000) and merely operates a wholesale meat market in Middletown, Conn., Morris & Company, of Maine, owning capital stock of the par value of eight thousand dollars ($8,000), the rest of the capital stock being owned by people wholly unconnected with the Morris organization.

Glenn & Anderson was incorporated under the laws of the State of Illinois on December 14, 1905, with an authorized capital stock of ten thousand dollars ($10,000), of which amount stock of the par value of eight thousand seven hundred fifty dollars ($8,750), has been issued, which company operates a wholesale meat market in the city of Chicago, Ill., Morris & Company, of Maine, owning forty-four and one-fourth (44¼) shares of said capital stock, the rest owned by persons not connected with the Morris organization.

It is not the fact, as alleged in the bill of complaint, that only those subsidiaries which are substantially 100 per cent parent company owned and which are engaged either in slaughtering, packing, or the selling of meats have been made parties defendant. On the contrary, it will be observed that the interest of Morris & Company in several of the above corporations does not even approach 100 per cent.

Defendants deny that the Western Meat Company, Oakland Meat & Packing Company, and the Nevada Packing Company are subsidiaries of Morris & Company.

Some Pertinent Facts and Suggestions in Connection with the Packing Industry

These defendants feel justified in this honorable court of equity in calling attention to some of the pertinent facts involved in this litigation and to some of the problems and difficulties which they encounter in endeavoring to do equity to all with whom they come in contact, and that means the whole population of the United States, for they deal in a necessity of life—food.

Equity demands that the producer of live stock be paid a fair price for his animals. Equity also demands that the consumer be served with the packers' finished product at the lowest possible cost. Equity, however, in the view of

the stock raiser means high prices for his cattle, while equity to the public means cheap meat on the table. It is practically [fol. 80] impossible to please both, for there can not be cheap meat on the table of the consumer when the producer receives high prices for the live meat animal.

Between this Scylla and Charybdis the packing industry in the past has been tossed in all directions by angry winds, sometimes blowing from the ranges, sometimes from the combined kitchens of houswives, storm tossed themselves by the mounting waves of the cost of living, and sometimes from the cavernous mouths of politicians whose interest in the matter is distinctly less honest than that of the producer and consumer. Thus the packer has suffered from agitation and misrepresentation; he has been a tempting target for time-serving aspirants for public favor and he has furnished campaign shibboleths. While equity has been demanded of the packer, and to the best of his ability he has rendered it to all, still equity has seldom been conceded to him.

The packing business is so intimately interwoven in the daily existence of every man, woman, and child in the Nation, so identified with their welfare and health, that it is extremely sensitive to criticism, and doubly so because it deals in a highly perishable product. These attacks cause not only moral but material damage.

The packing industry can not justly be blamed for the present high cost of living, because it gets less than 2 per cent profit out of its total sales (representing approximately one-fourth of 1 cent per pound of dressed meat), while the producer gets 85 per cent, and the balance goes to labor, freight, and other expenses. In the last few years packing-house labor has advanced more than 150 per cent and everything that goes into meat has advanced in proportion; and yet meat has not advanced in comparison with other necessities, and within the last six months meat at wholesale has declined 35 per cent.

We submit, in all candor, that we have reached the point where equity must be done to this vital industry, as well as to the producer and the consumer, because its future very closely affects the welfare and the happiness of all the people. It can only stand so much strain. It must not be torn down through prejudice or passion or even a misunder-

standing of the great facts which point to the eternal justice of this controversy.

The large packers are perhaps the largest borrowers of money of any industry in the world, because large sums are required to buy for cash the live meat animals offered daily for sale in the stockyards. The large packers are expected to "clean up" the yards every night. It also takes large sums of money to carry the stocks, transport the meat to and distribute them in the great consuming centers at a distance from the packing houses, and to make a market for American meats in foreign countries. This export trade is in the interest both of the American live-stock producer and of American labor. If the borrowing power of the packer is destroyed, this complex industry will be in a worse mess than the railroads; production will go down and the price of meats will necessarily go up. It is easier to tear down than to build up, as the world is now learning in this period of [fol. 81] reconstruction.

It is but just and proper that this honorable court should know the great and controlling facts underlying this industry and the difficult and delicate problems with which it is constantly confronted. The packer is in the nature of a buffer between the producer and the consumer. He is the manufacturer and distributor of meats and meat-food products for the people. If he does his work efficiently and at a reasonable cost, if the toll he exacts for the manufacture and distribution is fair and reasonable, then he performs a great and vital work for the people generally, and the machinery and efficiency with which this work is done should never be destroyed or impaired. It is just as important that this vital industry should be treated fairly and justly by the public as that the public be treated fairly and justly by this industry.

These defendants have never attempted or desired any monopoly in foods. They have never taken a position of defiance to the Government. On the contrary, they have honestly tried to observe the laws governing their business, not only in letter but in spirit as well. They desire to cooperate with the producer and to treat the consumer fairly. They want to deserve the confidence of all the people. The present efficiency and marketing system of the packing industry should be preserved to the people for all future time,

but this industry can not survive constant agitation and criticism.

These defendants stand ready and willing to meet the views of the Government along fair lines that would tend to bring about a better and more equitable understanding between this industry and the public, to the end that the present efficiency and lasting benefits of this great industry may be preserved and perpetuated for the American people.

The Prayer

These defendants say that the bill of complaint does not state a good cause of action and does not aver facts which would entitle the petitioner to any relief in a court of equity.

Further answering, these defendants deny that the petitioner is entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint; and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company, Ltd. (La.), Morris & Company (Pa.), Joseph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Company, Condit Beef & Provision Company, Corwin-Wilde Company, Chamberlain & Company, Inc., Donnelly & Company, Inc., National Hotel Supply Company, J. M. Wilson & Company, Middletown Beef & Provision Company, Glenn & Anderson Company, Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, Defendants, by M. W. Borders, Solicitor for said Defendants.

[fol. 82] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF THE WILSON DEFENDANTS—Filed February 27, 1920

The Joint and Several Answers of the Following-named Defendants to the Bill of Complaint Filed in This Cause Who Are Designated in said Bill of Complaint as Wilson Defendants

Corporation defendant named as parent company:

	Organized under laws of—
Wilson & Co. (Inc.)	New York.

Corporation defendants named as subsidiaries of the parent company:

Wilson & Co.	New Jersey.
Wilson & Co. (Inc.), of California	Nevada
Wilson & Co. (Inc.), of Louisiana	Louisiana.
Wilson & Co. (Inc.), of Oklahoma	Oklahoma.
South Dakota Provision Company	South Dakota.
Gotham Hotel Supply Company (Inc.)	New York.
Standard Beef Company	New York.
Stiefel O'Mara Company (Inc.)	New York.
Drexel Packing Co.	Illinois.
Albert Lea Packing Company (Inc.)	Virginia.
Mississippi Packing Company (Inc.)	Virginia.
Morton-Gregson Company	Delaware.
Paul O. Reymann Company	West Virginia.
Standard Provision Company	New Jersey.
Central Products Corporation	Virginia.

[fol. 83]

Individuals named as defendants because of their connection as directors, officers, and employees of Wilson & Co. (Inc.), defendant parent company, and its subsidiary corporation defendants above named:

Thomas E. Wilson.	George D. Hopkins.
Arthur Lowenstein.	Adolph E. Petersen.
Jacob Moog.	George H. Cowan.
Vonce De Leon Skipworth.	William C. Buethe.
Arthur L. Smith.	Carl F. Burrell.
James A. Hamilton.	James C. Good.

These defendants, jointly and severally for answer to the bill of complaint filed in this cause, or to so much thereof as these defendants are advised is material or necessary for them, or any of them, to make answer unto, say:

First: These defendants, for whom answer is herein made, for the limited purposes of this case only, admit that Wilson & Co. (Inc.), the corporation referred to in said bill of complaint as the parent company, is either directly or indirectly, or through subsidiaries, engaged in interstate and foreign commerce, but deny that any of the following acts constitute either interstate or foreign commerce as alleged in said bill of complaint, viz:

(a) The purchase and slaughter of live stock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which those nonedible products are largely used.

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats.

And these defendants, for whom answer is herein made, severally deny that Wilson & Co. (Inc.), or any of its sub-

sidiaries or any of the individuals named as Wilson defendants in said bill of complaint, are engaged in or are a party to any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or are attempting to increase and extend any monopoly therein of the products and commodities referred to in said bill of complaint, or to artificially control the supply and prices of the food supply of the Nation, or that such defendants acting by and through their principal officers, or otherwise, have come to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in said bill of complaint, or that any of said defendants have created or obtained any monopoly in interstate trade or commerce in live stock, meat products, and substitute foods, as charged in the bill of complaint, or that there has been or is in exist- [fol. 84] ence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce between the several States, wherein said Wilson defendants or any of them are in any way concerned or a party or parties, but these defendants herein named, and each of them, aver that no such state of facts exists as charged in said bill of complaint as related to said Wilson defendants or any of them.

And these defendants, and each of them, further deny that the said defendant parent company and its subsidiary companies who are defendants herein, either by themselves or in concert or combination with any or all of the other defendants named in the bill of complaint, have created or obtained any monopoly in interstate trade or commerce in live stock, meat products, and substitute foods, as charged in said bill of complaint, and deny that any unlawful monopoly by the defendants named in the said bill of complaint exists, as is charged therein.

Stockyards and Stockyard Terminal Railroads

Second. These defendants, for whom answer is herein made, further severally say that neither Wilson & Co. (Inc.), defendant parent company, or any of its subsidiaries, own or control, directly or indirectly, any interest in the form

of stock ownership or otherwise in any corporation, firm, or association now owning, controlling, or operating any public stockyard market company, stockyard terminal railroad company, or market newspaper, doing business in the United States, of the class and character referred to in said bill of complaint.

These defendants further answering, aver that notwithstanding that the said Wilson & Co. (Inc.), or any of its subsidiaries, do not own or control, directly or indirectly, any interest in any such companies, there has never been any discrimination against said defendant companies, or any interference with their right to go upon the premises of any of the said stockyard companies and purchase live stock or transact any other business thereon; that neither they, or any of them, nor any other person, firm, or corporation, so far as they, or either of them, are informed, have ever been denied the right to secure desirable packing house sites in or near any such stockyards; that said stockyards are open to any person, firm, or corporation in the United States who desires to sell live stock thereon, and they are open to any person, firm, or corporation in the United States who desires to go thereon and bid for the purchase of any live stock offered for sale in said stockyard; that to the best of their knowledge and belief, the ownership of stock in any such stockyard by any of the defendants owning any such stock has not, and does not, exercise any control over the prices for which live stock are bought or sold at any of said stockyards, and that ownership or control of any stock in any such stockyards does not give the owner thereof any advantage in the purchase or sale of live stock at any of such stockyards not possessed and enjoyed by any other person transacting business thereat.

[fol. 85] The defendants, Wilson & Co. (Inc.), and its subsidiaries, are charged with all manner of divers conspiracies in relation to the ownership, operation and control of public stockyard market companies, stockyard terminal railroads, and market newspapers when in truth and in fact, Wilson & Co. (Inc.), and its subsidiaries, did not at the time and do not now own any of the capital stock or other interest in any such public stockyard market companies, stockyard terminal railroads, or market newspapers, nor did they exercise any control or influence whatever in shaping the business policies of any such companies.

Further answering, the defendants, for whom answer is herein made, deny that the defendant Wilson & Co. (Inc.), and its controlling heads set about to acquire the various stockyards, appurtenances, and privileges incidental thereto, as charged in the bill of complaint, and the defendants deny that there was any concert of action or common understanding between the parent companies in regard thereto, and the defendants deny that the ownership and control of stockyards by others than the parent companies, or one of their members, or controlling heads, was discouraged and opposed, as charged in said bill of complaint, but on the contrary, in so far as the defendant parent corporation, Wilson & Co. (Inc.), or any of its subsidiary companies who are defendants in this cause are concerned, they and each of them allege the facts to be that, as heretofore set forth, they have never acquired any stock or other interest in any of the stockyards referred to in said bill of complaint, nor have they refrained from purchasing any such interest, because same was owned or controlled, either wholly or partially, by any other parent company defendant in this cause; nor have they, or either of them, entered into any contract, agreement, or understanding with any other defendant in this cause, the purpose of which was to effect any of the matters or things alleged in said bill of complaint, but specifically deny each and every allegation therein contained in relation thereto.

And the individual defendants, for whom answer is herein made, and each of them, except Thomas E. Wilson, further specifically deny that they, or either of them, own any interest, directly or indirectly, in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper, as described in the bill of complaint, and deny each and every allegation in the bill of complaint in relation to stockyards, and further deny that they now have or exercise or heretofore have had or exercised any voice or power, or now have or have had any agreement or understanding, directly or indirectly, express or implied, to do or bring about any of the matters or things alleged in the bill of complaint.

And further answering, the defendant, Thomas E. Wilson, says that he is the owner of a small amount of stock in a few public stockyard market companies, purchased by

him as an investment and not for any of the purposes set forth in said bill of complaint.

And the defendant, Thomas E. Wilson, further answering, denies that either he, Wilson & Co. (Inc.), or any of its subsidiaries or any of the other individuals named in said bill of complaint as Wilson defendants, is or has ever been [fol. 86] in any combination, agreement, or understanding with any of the other defendants mentioned in said bill of complaint, or any other corporation, firm, or association to accomplish or effect any of the things or conditions set forth in said bill of complaint in relation to any stockyards or stockyard terminal railroads or market papers referred to therein.

And these defendants for whom answer is herein made, further answering, severally say that if it be true, as alleged in the bill of complaint, that the public stockyard market companies directly or indirectly own or control the available land surrounding the yards owned by such companies, it was no doubt acquired at the time said yards were established to provide necessary land for the future growth and expansion of its business and the extension of said yards.

The value of stockyards as an investment is dependent upon the number of heads of live stock handled through such yards. It is therefore to the interest of such stockyard company to encourage the establishment at such yards of as many packing plants and other enterprises essential to the maintenance of a market as can be induced to locate at such yards. The greater the number of such plants, the larger the requirements of such a market; and if it be true that new packing companies can secure desirable packing sites only from said stockyard companies or from the companies owned or controlled by said stockyard companies, or their principal stockyards, or that said stockyard companies are in a position to determine what packing companies and how many plants should be established at the various stockyards, as charged in the bill of complaint, these defendants aver that said facts do not constitute a violation of any law of the land; and, so far as they are informed and believe, no packing company or other related enterprise has ever been denied the privilege of se-

curing a location for its plant at any of such stockyards.

These defendants, further answering, aver that, according to their observation, information, and belief, the ownership by packing companies of an interest in public stockyard market companies has been to the advantage of such stockyard companies.

The acquisition of such interests has usually been followed by improved management, better facilities, new extensions, and greater efficiency in the handling of live stock at and through the yards. The packer had the greatest possible interest in maintaining a market for his raw material, to popularize it with the producer as far as it is possible to do so, in order that a continuous supply of live stock will be available for his requirements. Much of the trouble suffered by the packing industry has grown out of the impression and suspicion existing in the minds of some of the producers of live stock that the ownership or control of stockyards by packing companies in some mysterious manner gives to the packer a power to influence and manipulate the prices paid for live stock. There was never a grosser misconception or more erroneous assumption wholly unsupported by facts.

[fol. 87] These defendants, further answering, severally aver that for sanitary reasons, and to comply with the laws of the country and regulations of Government bureaus, it is essential to remove the carcasses of dead animals from the premises promptly; and in order to have some one ready at all times to perform that service and properly equipped to do so, the defendants are informed that it is customary to enter into contract with some responsible concern to perform that service. These defendants are informed and believe that the number of such animals dying either in transit or after arrival is not sufficiently large to support a number of plants for disposing of same, and that the stockyard companies do not determine or fix the price which shall be paid for such dead animals.

These defendants, for whom answer is herein made, further answering severally deny that they or either of them is or has been a party to any arrangement, understanding, or agreement with any of the other defendants herein or with any public stockyard market company, or with any other person, firm, or corporation whatsoever, whereby

any such stockyard company was induced or was attempted to be influenced to discriminate against certain commission men or traders in the leasing office space, or in the allotment of pens or other accommodations as alleged in the bill of complaint. That some offices and some pens are more advantageously located than others is true of any structure, but unfortunately they can only be occupied by one tenant at a time—and these defendants for whom answer is made herein, further answering upon information and belief severally deny that there is any discrimination against any packer or independent buyer by any stockyards terminal railway operating at any stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining to stockyards is used by defendants owning or controlling them as a means for favoritism in dealing with commissioned men; or that such control of stockyards and facilities appertaining thereto has resulted in any discrimination by the defendants owning or controlling them in favor of banks, cattle loan institutions, rendering plants and concern supplying food for live stock which are located at or near to any of the stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining thereto is or has been used by the defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or that the control of stockyards or facilities appertaining thereto is, or has been, used by the Wilson defendants as a means to prevent the development and limit the number of new markets or to centralize or restrict business to the stockyards so controlled; or that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by the defendants, or any of them, to information concerning receipts and sales of live stock, its disposition and the dissemination of information to the producer. But, on the contrary, these defendants severally aver that according to their observations, information, and belief the service afforded by such stockyard companies is furnished without favoritism toward or discrimination against any shipper, dealer, packer, buyer, commission man, or any other [fol. 88] person, firm, or corporation transacting business at any or all of such stockyards.

Branch Houses

Third. These defendants further answering severally aver that Wilson & Co. (Inc.) and its subsidiaries operate approximately 120 branch houses in the United States, that said branch houses are established for the purpose of facilitating the sale and distribution of the products manufactured, produced, and sold by Wilson & Co. (Inc.) and its subsidiaries, and are not mere storage warehouses. These defendants further aver that the branch houses of Wilson & Co. (Inc.) and its subsidiaries are operated in actual and open competition with the branch houses of any and all the other defendants in this cause and in competition with all other persons, firms, and corporations engaged in a similar business.

Route Cars and Auto Trucks

Fourth. These defendants, for whom answer is herein made, further answering severally aver that the establishment by Wilson & Co. (Inc.) and its subsidiaries in their business of the system of distributing fresh meats, dairy and poultry products through refrigerator cars and auto trucks running on a fixed schedule has been an economic advantage to the country. It enables the smallest towns along such routes to receive regular supplies of food necessities and provides the producers with a much enlarged market for the consumption of their products. But these defendants deny the inference that there is anything unlawful in their use as a means of distribution. The use of refrigerator cars for such purposes is recognized, approved, and regulated by the Interstate Commerce Commission. All products so handled pay the same freight rates and are governed by the same rules and regulations as apply to or affect all other shippers handling the same commodities.

Cold-storage Warehouses

Fifth. These defendants further aver that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein, one of the objects of such storage being to conserve the surplus supplies of seasons of heavy or excess pro-

duction for use during seasons of light or under production, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Parent Companies' Acquisition of Stockyards Terminal Railroads and Market Papers and the Power Given by such Control.

Sixth. These defendants for whom answer is herein made, further answering, severally deny, as they have heretofore done, that the defendant Wilson & Co. (Inc.), or its subsidiaries, have acquired any interest in or control over [fol. 89] any public stockyard market companies, stockyard terminal railroads, or stockyard market newspapers, and, consequently each and all of the allegations contained in said bill of complaint, dealing with the power of such ownership or control and the manner in which it is alleged to be exercised, can have no application to the defendant Wilson & Co. (Inc.), or any of its subsidiaries, and, therefore, these defendants, and each of them, further answering, severally deny that Wilson & Co. (Inc.) and its subsidiaries, acting in concert or otherwise with any or all of the defendants named in said bill of complaint, have employed any power or privilege possessed by them through any such agencies to effect or discourage or suppress the establishment of independent packing companies or of dwarfing the growth of such independent packing companies as might then be in existence, as charged in said bill of complaint, and the said defendants further deny that the defendant Wilson & Co. (Inc.), parent company, or its subsidiaries, either alone or in concert with any or all of the other defendants named in said bill of complaint, have in any manner attempted to monopolize the meat industry of the country or artificially or otherwise control the ultimate price which the consumer pays for meat or meat products, as charged in the bill of complaint.

Contracts in Restraint of Trade

Seventh. And these defendants, for whom answer is herein made, and each of them, further answering, severally deny that Wilson & Co. (Inc.), the parent company, has entered into any unlawful contract or combination with

any other defendant named in said bill of complaint to restrain trade and commerce and to artificially or otherwise prevent between themselves competition in prices for which meat and meat products are sold.

These defendants further severally deny the existence of any contract, agreement, arrangement, understanding, or practice by which purchases of live stock by Wilson & Co. (Inc.), the parent company, has been gauged, divided, or distributed between Wilson & Co. (Inc.), the parent company, and any other defendant or defendants named in said bill of complaint. These defendants further deny that any purchases of live stock by Wilson & Co. (Inc.), the parent company, have been made in accordance with or pursuant to any agreement, understanding, or arrangement with any other defendant in regard thereto; or that the divers percentages of the purchases by the respective defendant parent companies of live stock at the various stockyards were agreed upon, and further deny that any understanding, agreement, or arrangement was had or made that certain of the parent companies should buy in certain stockyards or should refrain from buying at certain stockyards, as charged in the bill of complaint.

These defendants severally deny that any arrangement, agreement, or understanding was entered into with any other person, firm, or corporation designated in said bill of complaint as "independents" engaged in the meat packing business, whereby purchasing between Wilson & Co. [fol. 90] (Inc.) and its subsidiaries and such so-called "independents" was affected upon a percentage basis, as charged in the bill of complaint. And these defendants severally say that they, or either of them, to the knowledge or belief of the others, or other of them, do not know whether the percentage of purchase of live stock by the parent companies, other than the defendant herein, for whom answer is made, were uniform and approximately constant, as alleged in said bill of complaint, but on the contrary, from the best of their knowledge and belief, the defendants for whom answer is herein made aver that the purchases of live stock of the several defendant parent companies have not been uniform or constant in respect of any ratio of percentage, to the other defendants in this cause, or uniform as to the purchases made by the so-called "independents," and the defendants for whom

answer is herein made expressly deny that the percentages of purchases of live stock by Wilson & Co. (Inc.) have been uniform in any week, month, or year, as compared to the purchases of others, and the defendants severally aver that any and all of the purchases of live stock made by the said Wilson & Co. (Inc.) and its subsidiaries were not the result of and were not controlled or governed by any agreemen, understanding, combination, or conspiracy by and between the parent companies or any of their officers or employees, or with any other person, firm, or corporation whatsoever, but that they were the result of the trade demand of said Wilson & Co. (Inc.) and its subsidiaries and the active competition existing between Wilson & Co. (Inc.) and its subsidiaries and each and all of the other defendants named in the said bill of complaint.

And said defendants further answering severally aver that each and every allegation in said bill of complaint relating to the purchase of live stock on a percentage basis are found upon misconceptions and are in fact untrue; that the defendants, Wilson & Co. (Inc.) and its subsidiaries, are ever alert to maintain the volume of their business and to increase it wherever and whenever possible, without regard to the policy of any other company engaged in a similar business and in competition with any and every such company. The meat food products of Wilson & Co. (Inc.) and its subsidiaries are distributed to the public through the medium of retail dealers, Wilson & Co. (Inc.), and its subsidiaries have their regular line of customers among such dealers and it is the business policy of Wilson & Co. (Inc.) and its subsidiaries to supply as far as possible all the trade demands of its customers and to secure new customers wherever and whenever possible. Wilson & Co. (Inc.) and its subsidiaries purchase in the open markets of the country a sufficient number of live stock to fill their trade requirements without regard to how it may figure out in comparison with the purchases of any other person, firm, or corporation. If the demands of their customers increase the purchases of live stock are increased accordingly, and if there is a decrease in the demand, likewise purchases are decreased. The law of supply and demand govern- the aggregate purchases of live stock by Wilson & Co. (Inc.) and its subsidiaries, and from their knowledge of the business and their belief based upon observatons the ratio

[fol. 91] of the volume of business transacted by the several defendants in this cause is not more uniform than will be found to exist between competitors in any other basic industry in this country.

And these defendants for whom answer is herein made, further answering, severally aver that Wilson & Co. (Inc.), and its subsidiaries annually purchase and slaughter approximately 3,000,000 head of hogs, 1,000,000 head of cattle, and 1,000,000 head of lambs. In order to increase their annual purchase to the extent of 1 per cent it would mean that retail dealers handling the products of Wilson & Co. (Inc.), and its subsidiaries would be required to secure approximately 10,000 new customers who would exclusively purchase the Wilson brand of commodities for the entire year. It would mean the additional purchase and slaughter by Wilson & Co. (Inc.) and its subsidiaries of approximately 30,000 head of hogs, 10,000 additional cattle, and 10,000 lambs, representing an outlay of approximately $2,500,000 for the raw materials. Therefore, while the variations in the percentage of purchase of live stock from year to year may appear to be very small, yet the smallest fraction of an increase or decrease actually represents a very considerable number of live stock and quite a volume of business in money values. It is and has been the purpose of Wilson & Co. (Inc.) and its subsidiaries to use all lawful and legal means at their disposal to maintain their present volume of business and to increase it as much as possible.

These defendants, further answering, severally deny that means were adopted by any of the defendants named in the bill of complaint whereby and by the parent companies' control over stockyards, sales to outsiders or so-called Independents were controlled in any manner by Wilson & Co. (Inc.) or any of its subsidiaries, as charged in the bill of complaint; and these defendants deny that such control as the parent companies, other than Wilson & Co. (Inc.), have exercised over stockyards, stockyards loan institutions, stockyards terminal railways, and other facilities incidental to the operation of such stockyards has discouraged opposition or competition by commission men or by so-called independent packers, as charged in the bill of complaint. As heretofore alleged, the defendant parent

company, Wilson & Co. (Inc.), nor any of its subsidiaries own or control any interest in said stockyards, terminal railroads or the instrumentalities by means of which any of such results were accomplished, if indeed any such conditions were created as alleged, all of which these defendants deny.

Control of Substitute Foods

Eighth. These defendants, further answering, severally deny that they have eliminated competition in meat products, as charged in the bill of complaint.

Wilson & Co. (Inc.) and its subsidiaries are in active, open, free, and unrestricted competition with over 1,000 persons, firms, and corporations engaged in the business of slaughtering live stock in this country, more than 300 of which are engaged in interstate commerce. Moreover, [fol. 92] the meat products of said Wilson & Co. (Inc.) and its subsidiaries are sold in active competition with the products of local butchers in all sections of the country. It is absurd to charge that the defendants in this cause have eliminated competition in meat products when all of said defendants together do not slaughter in excess of 35 per cent of the cattle slaughtered for food in this country.

These defendants further deny that Wilson & Co. (Inc.) and its subsidiaries set about to control the Nation's sale of fish, vegetables, either fresh or canned, fruits, cereals, milk, butter, cheese, eggs and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint, and these defendants deny that their method of handling any such commodities has or had the effect of eliminating competition in the sale or of fixing the price of said products, but, on the contrary, they, and each of them, aver that according to their knowledge, information, and belief the total volume of business transacted by each, any, and all of the defendants in any of the commodities mentioned in this paragraph was only a small fraction of the total volume of business transacted in the United States in the said commodities; that the total volume of the business handled by the defendants in this cause in all of the so-called grocery lines approximates in the aggregate about $100,000,000, whereas the defendants are in-

formed and believe and so represent that the total volume of such business transacted by competitors other than the defendants herein, including the wholesale grocers, aggregates more than $4,000,000,000 annually.

These defendants further aver that the business in such lines transacted by each of the parent companies and their subsidiaries is separate, distinct, and independent from the business transacted by any other parent company or its subsidiaries, and said defendants deny that there is any contract, agreement, understanding, or concert of action by and between Wilson & Co. (Inc.) and its subsidiaries and any of the defendant parent companies in this cause whereby they, or any of them, have attempted to monopolize commerce in any of the products above mentioned, and further deny that any acts of Wilson & Co. (Inc.) and its subsidiaries have resulted in the defendants, or any of them, obtaining complete control of any food products, as charged in the bill of complaint, or any such control as would in the remotest degree approximate a monopoly in commerce in any of such food products; and these defendants further deny that great numbers of competitors have finally abandoned and quit their business or sold out to the defendant parent companies or their subsidiaries, as charged in the bill of complaint, but, on the contrary the defendants aver that according to their information and belief a few such competitors for sufficient reasons of their own may have retired from business, but the number of competitors in such lines of business has increased, and the volume of such business transacted by them has constantly grown and is now greater than at any previous time in the history of this country.

These defendants emphatically deny that unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price [fol. 93] of each article of food found on the American table, as charged in the bill of complaint.

And as a further evidence of the lack of facts to support the theories of said bill of complaint these defendants aver that long prior to the filing of the bill of complaint in this cause and long prior to the time that the Department of Justice took up for consideration the issues involved in its complaint Wilson & Co. (Inc.) and its subsidiaries determined of their *won* volition to retire from the business

of manufacturing, transporting, and distributing through their distributive system many of the products theretofore handled by them, such as canned goods and groceries. To this end they have long since disposed of all their manufacturing plants whereby fish and vegetable foods were manufactured, and steps are being taken for a final discontinuance of their distribution. This decision was not taken because of any existing contracts, agreements, or understandings in violation of law or of sound business ethics.

Wilson & Co. (Inc.) and its subsidiaries deny any and all allegations in said bill of complaint that its entry into or the handling of any of the so-called unrelated lines of food or so-called substitute food products was in any manner a violation of any law of the land or of sound economics or was against the interest of the producing or consuming elements of the population of this country.

Financial Growth, Present Net Worth, and Volume of Business

Ninth. The defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press, of the facts in relation to the financial growth of the parent companies other than Wilson & Co. (Inc.), the parent company, for whom answer is herein made, or in regard to the payment of cash dividends by any of said parent companies, other than Wilson & Co. (Inc.), and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the financial growth of said parent companies; but answering specifically for Wilson & Co. (Inc.), they aver that its financial growth has been the result of sound business management, in conformity with the laws of the land, and not a result of any combination, agreement, or understanding with any other person, firm, or corporation that gave it the slightest advantage over any of its competitors or influenced it to act in concert with any other person, firm, or corporation.

Number of Controlled Companies

Tenth. These defendants further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know the number of corporations and concerns, including trade names, which the parent companies, or the individual defendants and their families maintain and control, as set forth in the bill of [fol. 94] complaint, further and beyond those relating to said Wilson & Co. (Inc.) (parent corporation defendant) herein, and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which such other parent companies, or individual defendants and their families maintain and control, but answering specifically for Wilson & Co. (Inc.), and the other defendants for whom answer is herein made, these defendants deny that any corporation or concern or trade name controlled by it or them in any manner violates any law of the land.

Control of Various Industries

Eleventh. These defendants deny that if the growth of the parent companies and their subsidiaries is permitted to continue unchecked they will within a few years completely control the various industries in which said defendants are engaged.

Extent of Control in the Substitute Foods and Unrelated Commodities

Twelfth. These defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press as to the volume of business transacted by Armour & Company in 1916, and therefore neither admit nor deny the averments contained in the bill of complaint in respect thereof.

Thirteenth. These defendants for whom answer is herein made further severally deny that Wilson & Co. (Inc.) and its subsidiaries have any purpose or intention of securing control of the market for the so-called substitute meat foods, as alleged in the bill of complaint; but on the con-

trary the defendants herein aver that it is impossible that any or all of the defendants, even if they should act together (which they do not), in pursuance of a common purpose and design to attempt or secure control of the market for meat or meat substitute foods, as alleged in the bill of complaint, that, so long as the raw material entering into the manufacture of meat and meat food products is in the hands of millions of producers and is sold in the open markets of the country in free competition such as actually exists in the sale of said raw material, no man or group of men may secure a monopoly thereof.

These defendants further aver that there are over 1,000 persons, firms, and corporations in the United States engaged in business in active competition with Wilson & Co. (Inc.), and its subsidiaries and with the other parent corporations and their subsidiaries named as defendants in said bill of complaint, of which more than 300 are engaged in interstate and foreign commerce. All of said other concerns purchase their raw materials in the open market in competition with the defendants herein and sell their prod-
[fol. 95] ucts in the markets of the world in competition with each and all of the said defendants, each of whom is in open active competition with the other.

Individual Defendants

Fourteenth. The individual defendants named in said bill of complaint as Wilson defendants, answering further for themselves and each for himself, deny all and singular the allegations in said bill of complaint, wherein it is charged directly or indirectly, inferentially or otherwise, that they, or either of them, jointly or severally, have entered into any contract, agreement, or understanding with any other person, firm, or corporation, named as a defendant in said bill of complaint, to establish or create a monopoly or any restriction or restrictions in trade or commerce between the States or foreign nations, or to do any of the acts or things alleged in said bill of complaint as violating the laws of the land.

Fifteenth. Said individual defendants aver that they are the managing officers of Wilson & Co. (Inc.), and its subsidiaries, named as defendants herein; that it is and has been the constant aim and purpose of each of said indi-

vidual defendants to conduct the business of said corporation, defendants for whom answer is herein made, in strict conformity with the laws of the land and in consonance with the highest commercial ethics and ideals; that the bill of complaint in this cause follows closely the report of a Government bureau, made after an ex parte investigation, in which the defendants herein were not given an opportunity to testify or explain any of the matters or things set forth in said report.

The individual defendants further answering severally aver that the packing-house industry is but the manufacturing and distributing agency between the producer, on the one hand, and the consuming public, on the other; that when the prices of live stock are high and profitable to the producer, the consumers complain of the high cost of the products, and, on the other hand, when they are low, the producer is dissatisfied, and out of this unfortunate situation has grown the basis for the allegations in the bill of complaint which are grounded upon misconceptions, inaccuracies, and unwarranted deductions, having no foundation in fact.

Conclusion

Sixteenth. These defendants for whom answer is herein made, and each of them further answering, severally deny all, and all manner of unlawful combination and conspiracy wherewith they are by the said bill of complaint charged, or that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Respectfully submitted.

Wilson & Co. (Inc.), Wilson & Co., Wilson & Co. (Inc.), of California, Wilson & Co. (Inc.), of Louisiana, Wilson & Co. (Inc.), of Oklahoma, South Dakota Provision Company, Gotham Hotel [fol. 96] Supply Company (Inc.), Standard Beef Company, Stiefel O'Mara Company (Inc.), Drexel Packing Co., Albert Lea Packing Company (Inc), Mississippi Packing Company (Inc.), Morton-Gregson Company, Paul O. Reymann Company, Standard Provision Company, Central Products

Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Petersen, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, by Jewell P. Lightfoot, Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF CUDAHY DEFENDANTS—Filed February 27, 1920

Now come the defendants in the above-entitled cause (herein called "Cudahy defendants") viz:

1. The Cudahy Packing Company in said bill of complaint designated as a "parent company."

2. The Cudahy Packing Company of Nebraska, The Cudahy Packing Company of Louisiana Limited, The Cudahy Packing Company of Alabama, Nagle Packing Company, in said bill of complaint designated as "defendant subsidiaries."

3. Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, designated in said bill of complaint as "individual defendants"; all by George T. Buckingham and Thomas Creigh, their solicitors, and for answer to the bill of complaint in the above-entitled cause, or to so much thereof as these defendants are by counsel advised is necessary or material to be by him or any of them answered, say:

Cudahy defendants admit that said The Cudahy Packing Company is a corporation organized under the laws of the State of Maine. They aver, however, that said corporation was organized in October, 1915, and began business on the first day of November, 1915, and that said corpora- [fol. 97] tion, prior to that date, was never engaged in any business or activity.

They aver that individual defendants, Edward A. Cudahy, sr., since the organization of said The Cudahy Pack-

ing Company has been its president, and Edward A. Cudahy, jr., its vice president, and that the other individual defendants, since the organization of said parent company, have been connected with its as officers or employees.

Cudahy defendants deny that they or any of them have now or have ever had any stock ownership or other interest in Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, or that either of said companies is or has ever been a subsidiary of any of the Cudahy defendants.

Court's Jurisdiction

Cudahy defendants admit, for the purpose of this action, that said parent company, since its organization, November 1, 1915, has been, and now is, engaged in interstate and foreign commerce, and that it transacts the kinds of business as alleged under (a), (b), (c), and (d) of paragraph 1 under the above head, and also to a limited extent as alleged under (e) and (f) of said paragraph 1; and as to said latter limited number of items, none of them are unrelated to the general business of parent company but are all a natural out-growth of same, and economically related thereto.

Cudahy defendants deny that they or any of them by means of any unlawful means or method, or otherwise, attempted to dominate, control, or monopolize a very great portion or any portion, of the food supply of the Nation; or that they have, in conjunction with any person or corporation whatever, built up by any means, or attempted so to do, any unlawful monopoly in, or any control over, divers and sundry products mentioned in said bill, as alleged in said bill.

Cudahy defendants deny that by any methods, whatever, any of them have attempted or are attempting to increase or extend any monopoly, or that they are or any of them have been enabled in any manner, artificial or otherwise, to control the supply or price of the food supplies of the Nation, as alleged in said bill.

Object to be Attained

Cudahy defendants deny that any monopoly exists, or has been attempted, by any of them, as alleged under this head.

The Nature of the Business and Method by Which it is Conducted

Cudahy defendants admit that the allegations of the bill of complaint under this head are substantially true and correct, except that they aver that the "invention of refrigerator cars" was only one of the elements which caused said parent company to widely extend its market, and to [fol. 98] make the same Nation wide, and they allege that many other elements of natural growth and legitimate business development entered into and caused such expansion of business.

Defendants further aver that the business established by its predecessor corporation was begun in 1887, and that while in its inception this predecessor devoted itself exclusively to the slaughter of live stock, it from the very beginning in addition to dressing the carcass and selling the dressed meat to retail butchers, also engaged in the business of preparing various by-products, such as hides, fertilizer, bones, hair, etc., and that more than 30 years ago said predecessor began its operations and developed its business in other kindred lines in the manufacture and dealings in other articles both edible and inedible which were not derived from live stock.

The Stockyards

Cudahy defendants admit that the allegations in the bill of complaint under this head, are substantially true and correct in so far as they relate to the stockyards being a public market place, but they deny that the stockyards afford the cattle raiser the opportunity to dispose of his live stock for an immediate cash price. They aver that the stockyards provide facilities for attending to the handling of the live stock itself, and is a place where commission men, packers, feeders, and all other dealers have common access to the live stock for the purpose of independently buying, trading, selling, and inspecting it, but that all of these activities are entirely independent of any relation to the stockyards as such, and that in fact it is largely the facilities and financial resources of the packers and other dealers which provide to the cattle raiser the opportunity to dispose of live stock as alleged.

Defendants further deny that the stockyards by reason of its dominating position controls the conveniences and facilities associated with it, as alleged in said bill of complaint.

Conveniences and Facilities Controlled by Stockyards

Cudahy defendants aver that said parent company owns packing houses in or near, and does business at, the stockyards following, and at none other, to wit:

Sioux City, Iowa; Omaha, Nebr.; Kansas City, Kans.-Mo.; Wichita, Kans.; and North Salt Lake City, Utah.

With reference to these stockyards (and only as to these), Cudahy defendants, as to the subject matter of the respective subheads, under the above general head, say:

Packing-house sites: That they deny the allegations of the bill of complaint.

Sites for stockyards banks and cattle loan companies: That they deny the allegations of the bill of complaint.

Rendering plants: That they deny the allegations of the bill of complaint.

[fol. 99] Commission men's office space: That they admit the allegations of the bill of complaint.

Terminal railways: That they deny the allegations of the bill of complaint.

Market papers and journals: That they admit the allegations of the bill of complaint.

That they deny that control of said stockyards or of any facilities appertaining to said stockyards carried with it any of the profits, means of favoritism, means to prevent the establishment of new packing plants, means to prevent the development or to limit the number of new markets, or peculiar and exclusive access to information, and that they deny all allegations as alleged in paragraphs (a), (b), (c), (d), and (e) under the above general head.

That they further expressly deny that any said stockyards ever has—

(a) Derived any profit from the meat industry "levied upon it" as alleged in paragraph (a); or

(b) Exercised any favoritism in dealing with commission men or granted any monopolies, as alleged in paragraph (b); or

(c) By any means or method prevented the establishment of new packing plants or hampered the growth of those in existence, as alleged in paragraph (c); or

(d) Prevented the development or limited the number of new markets or centralized or restricted stockyards business, as alleged in said paragraph (d); or

(e) Possessed or used any peculiar or exclusive access to information, as alleged in paragraph (e).

Branch Houses, Route Cars, Auto Trucks, and Cold Storage Warehouses

Branch houses: Cudahy defendants admit the allegations of the bill of complaint under this subhead to be substantially true and correct, except that they have no direct knowledge as to the number of branch houses maintained in the United States by all interstate slaughterers and therefore neither admit nor deny the allegations concerning numbers.

Route cars: Cudahy defendants admit that the allegations of the bill of complaint under this subhead are substantially accurate and correct, except that they have no direct knowledge as to the total number of route cars operated by all parent companies, or the percentage which those bear to the total operated in the entire packing industry, or the number of towns reached thereby, or the number of States in which the same operate, and they therefore neither admit nor deny the allegations concerning numbers and percentage.

Auto trucks: Cudahy defendants neither admit nor deny the allegations under this subhead, but aver that none of them have ever operated any auto trucks over any route under the system or otherwise, as alleged under said subhead.

[fol. 100] Cold-storage warehouses: Cudahy defendants deny the allegations under this subhead.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

Cudahy defendants deny that they, or any of them, ever set about the acquisition of stockyards and appurtenances and privileges incidental thereto in the manner or with the purposes as alleged under said head.

They deny that such was done in any instance, or that it was done by concert of action or pursuant to a common understanding between any of the Cudahy defendants and any of the defendants in this bill of complaint other than Cudahy defendants.

They deny that the acquisition of control of any stockyards by any defendant to the bill of complaint other than Cudahy defendants was acquiesced in by any of Cudahy defendants, or that any defendant other than Cudahy defendants ever acquiesced in the acquisition of any interest in any stockyards ever acquired by any of Cudahy defendants, or that any of Cudahy defendants ever discouraged or opposed the acquisition by any other defendant of any interest in any stockyards or that any defendants other than Cudahy defendants ever opposed or discouraged the acquisition by Cudahy defendants, or any of them, of any stockyards property or any interest therein; but, on the contrary, Cudahy defendants aver that none of them have any interest whatever in any stockyards company or property, except only as follows, to wit:

Holdings in Stockyards Companies Jan. 30, 1920

	Par value	Number of shares			
		C. P. Co.	E. A. C.	E. A. C., Jr.	Total
Sioux City Stockyards Co. (preferred)	$100.00	1,117	.....	.....	1,117
Wichita Union Stockyards Co. (common)	100.00	6,140	119	.....	6,259
Salt Lake Union Stockyards Co. (common)	100.00	5,625	.....	.....	5,625
Union Stock Yards Co. of Omaha (Ltd,) (common)	100.00	.....	31	.....	31
Kansas City Stockyards Co. (common)	100.00	.....	500	.....	500

That in said Wichita property, and in said Salt Lake property, no defendant, other than Cudahy defendants, have any stock ownership or interest whatever; that all of said interests so acquired by any of the Cudahy defendants were acquired for purely legitimate business purposes, as investments and for value received.

They deny as to said stockyards companies in which any of them are interested, that, in pursuance of a common purpose, plan, and design, or otherwise outside investors [fol. 101] and independent packers have been forced out as dominating factors in the ownership and management of

said stockyards or that such have been replaced by any defendant or representative thereof, as alleged under the above head.

Cudahy defendants deny that by the various means set forth in said bill of complaint, or otherwise, the Cudahy Packing Company has, directly or indirectly, obtained control of any stockyard whatever, or that it has any interest in any except only as above set forth.

Cudahy defendants deny that by reason of their control of any stockyard, or otherwise, they have granted exclusive privileges such as the right to purchase dead animals, furnish supplies and facilities, locate cattle banks and cattle loan companies, or otherwise, to concerns and corporations in which they, or some of them, are stockholders, as alleged under this head. On the contrary, they aver that all of their acts as owners of any interest in said two stockyards, in which they have any substantial interest, have been in complete harmony with the holders of the majority of the stock in such stockyards company, and that Cudahy defendants, separately or collectively, do not own a majority of the stock in any said stockyards company, and that any or all of Cudahy defendants, in connection with any other defendants, do not in any case own a majority interest in any said stockyards company, and that none of Cudahy defendants have at any time ever exercised the aforesaid exclusive rights and privileges alleged under this head.

Cudahy defendants deny that any of the acts alleged under this head have been done with the intent and purpose alleged in said bill of complaint, or have had the effect therein alleged, or that the Cudahy Packing Company has been enabled thereby to obtain vast profits, or any profit, from the management of any said stockyard or from the granting of any said exclusive privileges relating thereto, or that said the Cudahy Packing Company has realized vast profits or any profits which were not disclosed in its profits on its books.

Cudahy defendants deny the Cudahy Packing Company has attempted to monopolize the meat industry of the country, or to artificially control the ultimate price which the consumer pays for meat and meat products, either by its own acts or in conjunction with any other defendant, as alleged under this head, or otherwise.

Cudahy defendants deny that the Cudahy Packing Company has ever entered into any unlawful contract or combination to restrain trade and commerce, or to artificially prevent between it and other defendant parent companies competition in the prices for which meat and meat products are sold as alleged under this head.

Cudahy defendants further deny that any contract or agreement described in said bill of complaint as "the percentage purchase agreement," or anything similar thereto, exists or was ever entered into or participated in by the Cudahy Packing Company parent corporation, or that it ever entered into or participated in any contract or agreement with any one which had as its ultimate object the [fol. 102] elimination of competition in the purchase of live stock or in the sale of dressed meats, as alleged under this head or otherwise.

They deny that it is a "well-established commercial principle" that limitation on the source of supply, and consequent limitation on volume of business, remove all incentive to reduce prices, or necessarily tend to do so, as alleged under this head.

With reference to the purchase of live stock, they deny that the Cudahy Packing Company agreed with said parent companies, or with anyone, or thereafter recognized between it and them certain percentages or proportions of purchase to which they deemed that each was entitled, and they deny that said the Cudahy Packing Company thereafter gauged its purchases in such manner that its annual purchases approximated actually or substantially percentages agreed upon, as alleged under this head.

They deny that as a means of perfecting this arrangement, or otherwise, divers percentages varying at different stockyards were ever agreed upon by or for the Cudahy Packing Company, or that understandings were had by or for it that certain parent companies should buy in certain yards, or should refrain from buying in certain yards, or that in order to prevent such plans from being disarranged by outsiders, or otherwise, agreements were made by the Cudahy Packing Company with "outsiders" by which its purchases were conducted on any agreed percentage basis, as alleged under this head.

They deny that by virtue of its control over any stockyards, or by any other method, purchases by outsiders or independents were ever controlled by the Cudahy Packing Company or by any agreement whatever made by or for it, or that it, by any control or by any agreement, ever discouraged any opposition by commission men or independent packers, as alleged under this head.

Cudahy defendants aver the fact to be that the Cudahy Packing Company and its subsidiaries, operates at various points in the United States a total of 105 branch houses and, in addition thereto, a large export and other business; that these branch houses are equipped with refrigeration and other facilities; that it employs therein a large number of salesmen; that it sells and distributes its products therefrom, within the territory naturally and commercially adjacent and tributary to each; that it makes every effort within its power, and by the best business activity and efficiency of which it is capable, to sell as much as it can; that the great bulk of said products originate at the said packing houses of the Cudahy Packing Company parent company; that at its packing houses, and at its branch houses and other said distribution facilities it has refrigeration and storage space in which it keeps products in the brief period between manufacture and sale; that naturally and logically the parent company purchases and slaughters at its packing plants such number of animals and such number only as it can reasonably expect and anticipate will yield the quantity of products which can be marketed through its said branch houses and other facilities; that the amount of product which it can sell necessarily determines and limits the number of animals which it buys and slaughters; that [fol. 103] it has never entered into any agreement and could not in the nature of the economic situation enter into any agreement which would either limit or expand the extent of its purchases, the latter being determined by the amount of products which it is able (a) to manufacture at its plants, (b) to keep and to refrigerate pending sale, and (c) to handle and sell through its branch houses, car routes, foreign trade outlets and other sale facilities.

That all other packers, handling the same products, and including the other so-called parent companies are similarly situated with respect to marketing their said products through their branch houses and otherwise; that all branch

houses and sales outlets are in keen and active competition with each other at various market and consuming points and the distributing centers; that the necessary result of this trade situation and the competition existing at said centers, is that each of the said packers is able to sell and distribute from one month to another, and annually, a similar proportion of products; and the natural result of this is that the purchase of live stock by the several parent companies maintain throughout monthly and yearly periods, substantially a similar percentage relation to each other; that this condition has always obtained in the packing business, and, in the opinion of the Cudahy defendants, always will obtain; that it is brought about by competition, and by the economic situation, and by the natural laws of trade and commerce, and not by any agreement or combination; that the aggregate purchase of live stock by the parent companies, and by the packing industry as a whole, is very great, amounting annually to millions of animals. In 1916 this latter total, according to the Federal Trade Commission, was approximately 70,000,000 animals; that there are daily, weekly, and monthly fluctuations in the relative number of its purchases by the various defendant parent companies; that these variations are considerable and substantial, amounting to hundreds of thousands of dollars; there are also great variations in the kind, character, quality, weight, and value of the respective animals purchased. When, however, these very great numbers are compared to each other, and the comparison expressed in percentages, it is inevitable that substantially similar percentages will appear from year to year, although the actual variations, as among the several packers, are in themselves enormous.

Control of Substitute Foods

These defendants deny that competition ever has been eliminated in meat products, as alleged under this head.

They deny that for the purpose of preventing the public from turning to meat substitutes, or for any other purpose they, or any of them, individually or collectively, or with any or all defendants, set about controlling the Nation's supplies of fish, vegetables, fresh or canned fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitutes

ordinarily handled by wholesale grocers or produce dealers or any of them, as alleged under this head.

They deny that to accomplish said purpose, or to accomp- [fol. 104] lish any purpose, they, or any of them, ever availed themselves of advantages available in route cars, auto trucks, branch houses, storage warehouses owned or controlled by the Cudahy defendants, or any of them, they deny that said advantage, or any advantages, were ever employed by Cudahy defendants in fixing prices so low as to gradually or otherwise eliminate competition, as alleged under this head.

They deny that they have participated in any attempts to monopolize which have resulted in complete control, or any control, in any substitute food lines, or that they are invading any fields, as alleged under this head.

Extent to Which the Monopolistic Attempts Have Been Successful

Financial Growth, Present Net Worth, and Volume of Business:

Cudahy defendants, as to the allegations under this subhead, say that they have no direct or authoritative information concerning the subject matter of the first paragraph, but that they are informed and believe that said allegations are untrue. Therefore, upon information and belief, they deny said allegations and each of them under the first paragraph of this subhead.

Cudahy defendants deny that there has been realized by the Cudahy individual defendants, or any of them, vast profits or any profits, in addition to those shown upon the books of the parent company, arising from any advantages or privileges growing out of interlocking control of stockyards and stockyard appurtenances, as alleged in the second paragraph under this subhead.

Number of Controlled Companies:

Cudahy defendants deny the allegations under this subhead, and particularly they deny that they, or any or all of them, control or have any interest in 762 corporations, or 574 corporations, or 131 trade names, or in any number of corporations or trade names remotely approximating either of said alleged numbers.

Cudahy defendants deny that they have acquired or have organized any corporations, whatever, in furtherance of any general scheme and plan of action with defendants other than Cudahy defendants, as alleged under this subhead.

Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:

Cudahy defendants deny that they, or any of them, exercise any degree of control in the various mentioned industries, as alleged under this subhead.

Cudahy defendants, as to the allegations concerning the business of Armour & Company, have no direct or authoritative information, and, therefore, neither admit nor deny the same.

Cudahy defendants deny that they, or any of them, are engaged in the business of canned fish, vegetables, and sun- [fol. 105] dry canned and dried fruit, and soda fountain supplies.

Cudahy defendants deny that they, or any of them, are engaged in the business of fruit preserves and grape juice, except only that Edward A. Cudahy, sr., and Edward A. Cudahy, jr., own and control a corporation called The Red Wing Company (Inc.), which manufactures fruit preserves and grape juice in a small and relatively negligible amount, and which has always been entirely independent of The Cudahy Packing Company.

Individual Defendants

Cudahy defendants admit that the Cudahy individual defendants are either officers, directors, agents, or employees of the Cudahy parent company. They deny that Cudahy individual defendants are financially interested to a great extent in stockyards, but aver that none of them is financially interested therein except only as above set forth. They deny that any of said Cudahy individual defendants are financially interested in terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with stockyards, except only that E. A. Cudahy, sr., owns, and for more than twenty years has owned, eighty (80) shares of stock in one rendering company and twenty-five (25) shares of stock in another. They deny that any acts of theirs, or any of them, enable the Cudahy parent

company to carry out the purpose of the supposed combinations described in said bill of complaint, and they deny that any such combination exists.

They deny that the Cudahy parent company, or its subsidiaries, either by itself or in conjunction with any other person or corporation, has complete control, or is likely ever to have complete control, or any control, over meat products or substitute foods, as alleged under this subhead.

Prayer

Wherefore, these defendants, having answered this bill of complaint, deny that the plaintiff therein is entitled to the relief sought by the prayer of said bill of complaint, or to any relief whatever, against Cudahy defendants, or any of them, and hence pray that they may be, and that each of them may be, hence dismissed.

The Cudahy Packing Company, Parent Company; The Cudahy Packing Company of Nebraska, The Cudahy Packing Company of Louisiana, Limited, The Cudahy Packing Company of Alabama, Nagle Packing Company, Subsidiaries; Edward A. Cudahy, Sr., Edward A. Cudahy, Jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, Individuals, all appearing by George T. Buckingham, Thos. Creigh, Solicitors for Cudahy Defendants.

Dated February 27, 1920.

[fol. 106] In Supreme Court of the District of Columbia

[Title omitted]

Answer of Western Meat Company and Others—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations:

	Organized under the laws of—
Western Meat Company	California.
Oakland Meat and Packing Company	California.
Nevada Packing Company	Nevada.

Individual:

Fred L. Washburn.

These defendants now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint in this cause has any ownership, interest, or title in and to any of the capital stock or property of any of these corporation defendants, and none of these corporation defendants is a subsidiary of any of said parent companies.

"Court's Jurisdiction"

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries are engaged in—

[fol. 107] (a) The purchase and slaughter of live stock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities);

but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities, referred to in the bill of complaint.

These defendants deny that they or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, but leave the complainant to make due proof thereof.

[fol. 108] "Object to be Attained"

These defendants deny that they have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that

any monopoly by the defendants named in the bill of complaint, as charged therein, exists. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted," "The stockyards," "Conveniences and facilities controlled by stockyards," "Branch houses, route cars, auto trucks, and cold-storage warehouses," "The parent companies' acquisition of above-described facilities and their purpose in doing so," and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof, but leave the complainant to make due proof thereof.

"Control of Substitute Foods"

These defendants deny that they, or any of them, have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities, or otherwise, to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint, and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

"Extent to Which the Monopolistic Attempts Have Been Successful"

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies, contained in the section or subdivision of the bill of com- [fol. 109] plaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

"Individual Defendants"

Defendant Fred L. Washburn denies that he is either an officer, director, agent, or employee of any of the so-called parent companies or their so-called subsidiaries, or a large stockholder of any of the said parent companies or their subsidiaries, and he further denies that, in his individual capacity, he is financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other companies intimately related with the stockyards as charged in the bill of complaint. He further denies that in addition to his individual holdings he holds stock in any corporation dealing in the so-called substitute foods and so-called unrelated commodities for the benefit of the said parent companies.

Defendant Fred L. Washburn denies that he has or exercises any control over the facilities or instrumentalities of the meat business as charged in the bill of complaint, and he denies that by reason of any interest which he may have in such corporations dealing in so-called substitute foods and so-called unrelated commodities, the so-called parent companies are enabled to carry out the alleged purpose of the combinations charged in the said bill of complaint.

Defendant Fred L. Washburn denies that any interest which he may have in any corporation hereinbefore described, is now or will continue to be a sinister or ever present means of furthering any attempt to monopolize or to perfect a monopoly so that the so-called parent companies or their subsidiaries will have or will ever have complete control either of meat products or of all so-called

substitute foods consumed in the United States as charged in the bill of complaint.

"Subsidiaries Defendants"

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent companies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not [fol. 110] sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore these defendants pray that the bill of complaint herein be dismissed with costs.

Western Meat Company, Oakland Meat and Packing Company, Nevada Packing Company, Fred L. Washburn, by Henry Veeder, Their Solicitor.

[fol. 111] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF NEW ENGLAND DRESSED MEAT & WOOL COMPANY AND OTHERS—Filed February 27, 1920.

The Joint and Several Answer of the Following Corporations, Defendants, to the Bill of Complaint Filed Herein

Name	Organized under laws of—
New England Dressed Meat & Wool Company	Maine.
North Packing & Provision Company	Maine.
The Sperry & Barnes Company	Connecticut.
John P. Squire & Company	Maine.
John P. Squire & Company (Inc.)	Massachusetts.
John P. Squire & Company (Inc.)	Rhode Island.
Springfield Provision Company	New Hampshire.
White, Pevey and Dexter Company	Maine.

These defendants, now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants, and none of these defendants is a subsidiary of any of said parent companies.

"Court's Jurisdiction"

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries, are engaged in—

[fol. 112] (a) The purchase and slaughter of live stock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities);

but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract, or in any manner or by any act, method, or means have engaged in, or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.

These defendants deny that they or any of them in collusion, agreement or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, acting by and through their principal officers, or otherwise, have attempted to dominate, control, and mo-

nopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in the bill of complaint.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, are attempting to increase and extend said alleged monopoly of the products and commodities referred to and as charged in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, but leave the complainant to make due proof thereof.

[fol. 113] "Object to be Attained"

These defendants deny that they, or any of them, have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted;" "The stockyards;" "Conveniences and facilities controlled by stockyards;" "Branch houses, route cars, autotrucks, and cold-storage warehouses;" "The parent companies' acquisition of above described facilities and their purpose in doing so;" and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof, but leave the complainant to make due proof thereof.

"Control of Substitute Foods"

These defendants deny that they or any of them, have eliminated competition in meat products, as charged in the

bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities or otherwise, to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court, the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

[fol. 114] "Extent to Which the Monopolistic Attempts Have Been Successful"

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies, contained in the section or subdivision of the bill of complaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

"Individual Defendants"

These defendants neither admit nor deny the allegations and charges relating to the individual defendants and the so-called parent companies contained in the section or subdivision of the bill of complaint entitled as above, but leave the complainant to make due proof thereof.

"Subsidiaries Defendants"

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent com-

panies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof it is in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to the bill of complaint.

[fol. 115] Wherefore these defendants pray that the bill of complaint herein be dismissed with costs.

New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company, John P. Squire & Company, Inc. (Massachusetts), John P. Squire & Company, Incorporated (Rhode Island), Springfield Provision Company, White, Pevy and Dexter Company, by Henry Veeder, Their Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

STIPULATION AS TO DECREE—Filed February 27, 1920

It is hereby stipulated by and between the parties hereto that the decree hereinafter contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

The decree above referred to is as follows:

(In the original "Stipulation and Proposed Decree" filed in the Supreme Court of the District of Columbia there was inserted here the proposed decree which was the decree [fol. 116] entered in this cause by said court and is set out in full in the book on pages 1 to 12, both inclusive, but is omitted here to avoid unnecessary repetition.)

Dated Washington, D. C., February 27, 1920.

A. Mitchell Palmer, Attorney General of the United States. Chas. J. Faulkner, Jr., Attorney for Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company (Ltd.) (La.), The Anglo American Provision Company (Ill.), The Colorado Packing and Provision Company (Colo.), Fowler Packing Company (Me.), Hammond Packing Company (Ill.), The New York Butchers Dressed Meat Company (N. Y.), Atlantic Hotel Supply Company (Inc.), (N. Y.); J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur

Meeker, Robert J. Dunham, F. Edson White, George M. Willets, Frederick W. Cross, George B. Robbins.

Henry Veeder, Attorney for Swift & Company (Ill.), Swift & Company (W. Va.), Swift & Company (Inc.) (Ky.), Swift & Company (Ltd.) (La.), Swift & Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York (N. Y.), J. J. Harrington & Company (Inc.) N. Y., Bimbler Company (N. J.), The G. H. Hammond Company (Mich.), Omaha Packing Company (Ky.), Plankinton Packing Company (Wis.), Sturtevant & Haley, Beef & Supply Company (Mass.), E. K. Pond Packing Company (Ill.), Van Wagenen & Schickhaus Company (N. J.), Western Packing Company (Colo.), Hammond Beef Company (Mich.), Omaha Meat Company (Calif.), A. Canfield Commission Company (N. J.), H. C. Derby Company (N. Y.), Metropolitan Hotel Supply Company (Me.), Vermont Supply Company (Mass.), The Hotchkiss Beef Co. (N. Y.), New England Dressed Meat & Wool Company (Me.), North Packing & Provision Company (Me.), Sperry & Barnes Company (Conn.), John P. Squire & Company (Me.), John P. Squire & Company (Inc.) (Mass.), John P. Squire & Company (Incorporated) (R. I.), Springfield Provision Company (N. H.), White, Pevey & Dexter Company (Me.), Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

M. W. Borders, Attorney for Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Jo- [fol. 117] seph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Co. (N. Y.), Condit Beef and Provision Company (N. J.), Corwin Wilde Company (Mass.), Donnelly & Company, Inc. (Mass.),

National Hotel Supply Company (Ill.), Chamberlain & Company, Inc. (Mass.), J. M. Wilson & Company (Mass.), Middletown Beef and Provision Company (Mass.), Glenn & Anderson Co. (Ill.), Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. McFarlane, Harry A. Timmins.

Jewell P. Lightfoot, Attorney for Wilson & Co., Inc. (N. Y.), Wilson & Co. (N. J.), Wilson & Co., Inc. of Calif. (Nev.), Wilson & Co., Inc. of Louisiana (La.), Wilson & Co., Inc., of Okla. (Okla.), South Dakota Provision Co. (S. D.), Gotham Hotel Supply Co., Inc. (N. Y.), Standard Beef Co. (N. Y.), Stiefel-O'Mara Co., Inc. (N. Y.), Drexel Packing Co. (N. Y.), Albert Lea Packing Co., (Va.), Mississippi Packing Co., Inc. (Va.), Morton-Gregson Co. (Del.), Paul O. Reymann Co. (W. Va.), Standard Provision Co. (N. J.), Central Products Corporation (Va.), Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

Thomas Creigh, Attorney for the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska (Neb.), Cudahy Packing Company of Alabama (Ala.), Cudahy Packing Company of Louisiana, Ltd. (La.), Nagle Packing Company (N. J.), Edward A. Cudahy, Sr., Edward A. Cudahy, Jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

Henry Veeder, Attorney for Western Meat Company (Cal.).

Henry Veeder, Attorney for Oakland Meat and Packing Company (Calif.).

Henry Veeder, Attorney for Nevada Packing Company (Nev.).

Henry Veeder, Attorney for Fred L. Washburn.

[fol. 118] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

DECREE AND CONSENTS—Filed February 27, 1920

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the

parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually [fol. 119] enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint or trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby,

perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be [fol. 120] made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating

their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Figs.
Cherries.	Gooseberries.
Apple butter.	Oranges.
Apricots.	Strawberries.
Blackberries.	Apples.
Peaches.	Prunes.
Pineapple.	Raisins.
Raspberries.	Dates.
Currents.	

[fol. 121] 4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in

this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extra.
Vip fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinach chili.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.
Pecans.
Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.
Oats.
Hominy.
Hominy feed.
Horse feed.
Brewers' flakes.
Brewers' grit.
Ground corn.
Cracked corn.
Crushed white oats.
Feed barley.
Feed meal.
Feed wheat.
Rolled oats.

Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain.

13. Miscellaneous articles, to wit:

Cigars
China.
Furniture.
Bluing, starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster.
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

[fol. 122] And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by

themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.
Canned mackerel.
Bulk mackerel.
Bulk, canned, and cured herring.
Canned salmon.
Canned sardines.
Canned shrimp.
Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.
Navy beans.
Lima beans.
Peas.
Beets.
Corn.
Okra.
Potatoes.
Tomatoes.
Celery.
Garlic.
Horse radish.
Pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.

Peaches.
Pineapples.
Raspberries.
Currants.
Prunes.
Raisins.
Dates.

[fol. 123] 4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineaple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace chilli.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.
Pecans.
Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of

said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however, That nothing contained in this decree shall prohbit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat market shall be continued to be operated for that purpose.

[fol. 124] Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space

is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature what-[fol. 125] soever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market

newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General

may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to [fol. 126] be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such of the defendants as now main-

tain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any [fol. 127] violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard

market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association, manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their de- [fol. 128] livery systems, shall be submitted by the defendants to the court for its investigation and determination as

to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application *with* the parties may make with respect to this decree.

Walter I. McCoy, Chief Justice.

February 27, 1920.

The defendants Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for Above-named Defendants.

Dated 27th day of February, 1920.

The defendants Wilson & Co., Inc., (N. Y.); Wilson & Co. (N. J.), Wilson & Co., Inc., of Calif. (Nev.); Wilson and Co., Inc., of Louisiana (La.); Wilson & Co., Inc., of Okla. (Oklahoma); South Dakota Provision Co., Gotham Hotel Supply Co., Inc.; Standard Beef Co.; Stiefel-O'Mara Co., Inc.; Drexl Packing Co.; Albert Lea Packing Co., Inc.; Mississippi Packing Co., Inc.; Morton-Gregson Co.; Paul O. Reymann Co.; Standard Provision Co., Central Products Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the fore-

going decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Jewel P. Lightfoot, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska, Cudahy Packing Company of Alabama, Cudahy Packing Company of Louisiana, Ltd., Nagel Packing Company, Edward A. Cudahy, [fol. 129] sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, and George Marples, appear herein generally by Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

Thomas Creigh, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company, Ltd. (La.), The Anglo American Provision Company, The Colorado Packing and Provision Company, Fowler Packing Company, Hammond Packing Company, The New York Butchers Dressed Meat Company, Atlantic Hotel Supply Company, Inc., J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, appear herein generally by Charles J. Faulkner, jr., their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Charles J. Faulkner, Jr., Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris &

Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Provision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Camberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. Borders, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Swift and Company (Ill.), Swift and Company (W. Va.), Swift and Company, Inc. (Ky.), Swift and Company, Ltd. (La.), Swift and Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York, J. J. Harrington and Company, Inc., Bimbler Company, The G. H. Hammond Company, Omaha Packing Company, Plankinton Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Company, [fol. 130] Van Wagener and Schickhaus Company, Western Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, The Hotchkiss Beef Co., New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey and Dexter Company, Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered

herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for the Above-named Defendants.

Dated Washington, February 27, 1920.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION OF SOUTHERN WHOLESALE GROCERS ASSOCIATION AND OTHERS FOR LEAVE TO INTERVENE—Filed September 10, 1921

* * * * * * *

To the Honorable the Judges of the Supreme Court of the District of Columbia:

Come now the Southern Wholesale Grocers Association, a corporation duly and legally incorporated under the laws of the State of Tennessee, and a citizen of the State of Tennessee; Henry Sears & Company, a corporation of the Commonwealth of Massachusetts; John Hoffman & Sons Company, a corporation of the State of Wisconsin; Mason Ehrman & Company, a corporation of the State of Oregon; J. M. Radford Grocery Company, a corporation of the State of Texas; Southern Distributing Company, a corporation of the State of Virginia; Hall Grocery Company, a corporaton of the State of Arkansas; Albert Mackie & Company, Ltd. and the Hicks Company, corporations of the State of Louisiana; W. D. Cleveland & Sons, a corporation of the State of Texas; Rappides Grocery Company, Inc., a corporation of the State of Louisiana; Oliver Finnie Grocery Company, a corporation of the State of Tennessee, and move the Court for leave to intervene in the above-styled case, and represent to the Court that they are interested in the subject matter of this suit and that their interest arises as follows:

Southern Wholesale Grocers Association is an association of wholesale grocers, with membership in excess of 2,000, whose members reside in at least 40 of the States of [fol. 131] the Union, and such members are engaged in the handling and selling all commodities usually handled and dealt in by wholesale grocers,

The other petitioners herein are themselves wholesale grocers doing business in their respective communities and are directly interested in the matter of this suit and this petition is brought on behalf of Wholesale Grocers throughout the United States who are in the same position and bear the same relation to this cause as petitioners herein other than the Wholesale Grocers Association. Said Wholesale Grocers, petitioners herein, are each and all buying, selling, handling and dealing in the commodities other than meats described in and affected by the decree heretofore entered in this cause.

Prior to the 27th day of February, 1920, the date on which the original decree was entered in this cause, petitioner Southern Wholesale Grocers Association, the other petitioners herein and other wholesale grocers throughout the United States similarly situated and interested as petitioners herein other than the Wholesale Grocers Association, presented facts to the Federal Trade Commission of the United States showing and tending to show that the defendants in this cause were guilty of unfair methods of competition in violation of Section 5 of the Act of Congress creating said Commission and in violation of the Anti-Trust Laws and obstructing competition and which tended to create a monopoly in the nation's food. Said Federal Trade Commission had, prior to February 27, 1920, made and filed a report finding that said defendants had engaged in and were engaged in practices so violative of the laws of the United States and which practices created and tended to create a monopoly.

Petitioners also prior to said last named date consulted with the Department of Justice and made suggestions as to the form which said decree of February 27, 1920, subsequently took and petitioners, through their counsel, became in fact, although not in name, parties participating in the proceedings, leading up to the entry of said original decree, and that by the entry of said decree the controversy theretofore existing between petitioners and those similarly situated on the one side and the defendants in this cause on the other, were largely adjusted and the petitioners respectfully show that said decree was and is just, legal and proper and prescribes lawful, fair and appropriate restrictions on the conduct of the defendants.

Petitioners in July or August, 1919, brought a complaint against the Director General of Railroads and all the railroads of the United States before the Interstate Commerce Commission, alleging and charging that said railroads yielding to the power of the packers, defendants herein, had accorded such packers rates and privileges unjust, unreasonable and unduly preferential in violation of the Acts to Regulate Commerce, and that petitioners were in direct competition with said packers, all of which allegations were true as appears from said complaint on file with the Interstate Commerce Commission, a copy of which will be exhibited to the Court whenever necessary.

Petitioners herein, after the entry of said original decree, [fol. 132] recognized the propriety and efficacy thereof and suspended the prosecution of said complaint before the Interstate Commerce Commission.

Petitioners further show that a complaint of the National Wholesale Grocers Association, an association with purposes similar to the Southern Wholesale Grocers Association, against the railroads was brought to and heretofore pending before the Interstate Commerce Commission similar to that brought by the Southern Wholesale Grocers Association and consolidated therewith, numbered on the docket of the Interstate Commerce Commission as Docket No. 10745, and docketed No. 10745—Sub. No. 1. Some of the defendants to the decree in this case and all of the principal defendants herein, intervened in said proceeding before the Interstate Commerce Commission and in their interventions relied upon the decree herein as the reason why the complaints before the Interstate Commerce Commission should not be granted.

When the decree was entered in this cause your petitioners herein being, as aforesaid, by representation parties recognized that said decree by eliminating the unfair and unlawful practices of the defendants herein in this case before the Interstate Commerce Commission did not themselves further prosecute their complaint nor did these petitioners take any proceeding or attempt to take any action to enforce the findings of the Federal Trade Commission.

Thereafter on the 22nd day of June, 1921, the Interstate Commerce Commission decided said two complaints and in substance denied the relief asked for therein. In

the course of the decision of said Commission the decree in this case was referred to. Petitioners respectfully call attention to the opinion of the Interstate Commerce Commission, which is reported in Vol. 62, page 375 et seq. of the opinions of that Commission.

Petitioners believe, and believing so allege, that complainants in said petition to the Interstate Commerce Commission would have obtained the relief sought by said complaints had not this Court already granted the relief by the decree of February 27, 1920. Should this Court now set aside or materially lessen the force of its decree heretofore entered, the result would be to give the defendants herein an unjust and inequitable advantage over petitioners and others in like situation.

To set aside or weaken the decree heretofore entered in this cause would be contrary to the form and purposes thereof and would deprive petitioners of their rights and petitioners have no relief except in this Court and in this cause, petitioners having by reliance on said decree lost advantages and rights which they had prior to the entry thereof and defendants herein having obtained a cessation of the prosecution of petitioners' complaint before the Interstate Commerce Commission and having been freed from any attempt by petitioners to make effective the finding of the Federal Trade Commission defendants are estopped from seeking or obtaining any modification of the decree which perpetually enjoined them from the unlawful acts of which they were guilty, to the injury of your petitioners herein. Only by the power of this Court of Equity [fol. 133] can the rights of the petitioners be protected and petitioners have a direct and special interest in the issues in this case and in the maintenance of said decree. Petitioners present herewith their intervention herein.

Wherefore the four named intervening petitioners, being otherwise remediless, ask the Court to make and cause to be entered herein an order permitting them to file said intervention presented herewith to the end that petitioners may fully plead their respective interests, be notified of all hearings subsequently had herein and be heard on any

motion or proceeding seeking to change, weaken or otherwise modify the original decree in this cause.

Hoke Smith, Washington, D. C.; Edgar Watkins, Fourth National Bank Bldg., Atlanta, Ga., Attorneys for Petitioner.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER GRANTING PETITION TO INTERVENE—Filed September 10, 1921

* * * * * * * *

This cause coming on to be heard on the application of Southern Wholesale Grocers' Association, Henry G. Sears Company, Mason Ehrman & Co., John Hoffman & Sons Company, J. M. Radford Grocery Co., Southern Distributing Co., Oliver Finnie Grocery Company, Hall Grocery Co., Albert Mackie & Co., The Hicks Co., W. D. Cleveland & Sons and Rapides Grocery Co., interveners in this suit to be made parties, and it appearing to the court that said petitioners have an interest in the subject matter of this suit sufficient to enable them to become parties thereto, it [fol. 134] is therefore ordered, adjudged and decreed that said petitioners have leave to intervene in said suit; this order to be without prejudice in any proceeding heretofore had in this cause.

A. A. Hoehling, Justice.

September 10, 1921.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

INTERVENING PETITION OF SOUTHERN WHOLESALE GROCERS ASSOCIATION AND OTHERS—Filed September 10, 1921

* * * * * * * *

To the Honorable the Judges of said Court:

Come now your interveners, Southern Wholesale Grocers Association, Henry G. Sears Company, John Hoffman

& Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rappides Grocery Company. Oliver Finnie Grocery Company, complaining of the defendants named in the decree in the above-styled cause, hereinafter called defendants, and represent and show unto your Honor:

1. Southern Wholesale Grocers Association is a corporation duly and legally incorporated and existing under the laws of the State of Tennessee, with an office and place of business from which it transacts its business in Jacksonville, in the State of Florida.

2. Intervener Henry G. Sears Company is a corporation incorporated under the laws of the State of Massachusetts, doing business in Holyoke, in said State.

3. Intervener John Hoffman & Sons Company, is a corporation incorporated under the laws of the State of Wisconsin and doing business at Milwaukee, in said State.

4. Intervener, Mason Ehrman & Company, is a corporation incorporated under the laws of the State of Oregon, doing business at Portland, in said State.

5. Intervener J. M. Radford Grocery Company is a corporation incorporated under the laws of the State of Texas, doing business at Aberdeen, in said State.

6. Intervener Southern Distributing Company, is a corporation incorporated under the laws of the State of Virginia, doing business at Norfolk, in said State.

7. Intervener Hall Grocery Company is a corporation incorporated under the laws of the State of Arkansas, doing business at Pine Bluff, in said State.

8. Interveners The Albert Mackie & Company, Ltd., and the Hicks Company, corporations incorporated under the laws of the State of Louisiana, doing business respectively at New Orleans and Shreveport, in said State.

[fol. 135] 9. Intervener W. D. Cleveland & Sons, is a corporation incorporated under the laws of the State of Texas, doing business at Houston, in said State.

10. Intervener Rappides Grocery Company is a corporation incorporatd under the laws of the State of Louisiana, doing business at Alexandria, in said State.

11. Intervener Oliver Finnie Company is a corporation incorporated under the laws of the State of Tennessee, doing business at Memphis, in said State.

12. Southern Wholesale Grocers Association is an association without capital stock, not engaged in business but composed of wholesale grocers located in different parts of the United States, its members being corporations, partnerships and individuals engaged in buying and selling the food products in wholesale quantities described in the decree entered in this cause on the 27th day of February, 1920. The other interveners herein are business associations, partnerships and firms as stated, engaged in business for profit, and dealing in and handling food commodities at wholesale in interstate commerce, and are engaged in handling and dealing in the commodities described in the decree entered in this case on the 27th day of February, 1920, and this intervention is filed on behalf of the interveners herein and all other persons in like situation and with a like relationship to the matters involved in said decree.

13. Heretofore, in July or August, 1919, intervener Southern Wholesale Grocers Association, for itself and in behalf of its members, filed its complaint before the Interstate Commerce Commission, against the then Director General of Railroads and all the Railroads of the United States, wherein it was claimed that certain practices, rates and classifications of the defendant railroads in interstate transportation were prejudicial and preferential to Armour & Company, Wilson & Company, Morris & Company and the controlled corporations of said Company, defendants herein, and violative of the Acts to regulate commerce, and wherein it was prayed that such perferences and advantages should be inquired into, condemned and prohibited. Said complaint was docketed before the Interstate Commerce Commission under the title of Docket No. 10745 (Sub-No. 1) and a copy of said complaint will be exhibited to the Court on the hearing hereof.

14. Subsequent to the filing of said complaint of the Southern Wholesale Grocers' Association before the Inter-

state Commerce Commission, hearings were had and testimony taken, but before all the testimony had been taken, to wit, on or about the 9th day of November, 1919, it being brought to the attention of the complainants and of the various packers who had intervened in said complaint, many of whom are defendants in this case, that the Attorney General of the United States was demanding an entry of a decree such as was subsequently entered in this cause on the 27th day of February, 1920, it was suggested that the complaint before the Interstate Commerce Commission should not be further prosecuted until after the entry of said decree.

15. Intervener Southern Wholesale Grocers' Association, other interveners herein, and the membership of the Southern Wholesale Grocers' Association throughout the [fol. 136] United States, made suggestions as to the form that decree should take in this case, through their counsel, and when the decree was finally entered said Association, the other interveners herein, and the members of said Association, believing that said decree, if obeyed and maintained, would compel the defendants to said decree to limit their business methods to fair practices in interstate commerce and would permit interveners and the other members of the Southern Wholesale Grocers' Association to compete in the handling and dealing in food commodities, did not further prosecute their complaint before the Interstate Commerce Commission.

16. The Southern Wholesale Grocers' Association, however, having first moved to suspend the proceedings before the Interstate Commerce Commission, which motion was overruled, did not dismiss its complaint because it was of the opinion that to do so might weaken the petition of the National Wholesale Grocers' Association which had filed a similar complaint against the railroads and which complaint was left pending.

17. Subsequently, to wit, on the 22nd day of June, 1921, the Interstate Commerce Commission decided the complaint of the National Wholesale Grocers Association, which was Docket No. 10745, and in reaching its decision therein considered as a part of the record in said complaint

the decree of February 27, 1920, entered in this Court and recited the claims of the defendants herein who were also interveners in said complaint before said Commission, and among recitations called attention to the fact that defendants herein, Swift & Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company, asserted "that the entry of the decree eliminated the competition to which the grocers object and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

18. Interveners believe and so allege that the decree of February 27, 1920, did in a large part remove, as contended by the packers aforesaid, the advantages and preferences theretofore enjoyed by said packers and complained against in said complaint, and interveners further allege that said packers, defendants in said decree and interveners in said complaint, have received the benefit of said decree in the result shown by the opinion of the Interstate Commerce Commission, which opinion this Court judicially knows and which will be exhibited to the Court on the hearing hereof.

19. Interveners further show that if the decree in this cause entered on the 27th day of February, 1920, be modified as prayed, that such modification will effectually destroy the value of said decree, will reinstate the defendants thereto in the unlawful privileges and preferences complained against in said complaints of the National Wholesale Grocers Association and Southern Wholesale Grocers' Association and that it would be inequitable and unjust and unfair to permit the defendants, after having obtained the advantages of said decree, now to be released from the inhibitory provisions thereof.

[fol. 137] 20. Interveners further show that the defendants to said decree by virtue of their inter-relation, their possession of private cars and by reason of the preferences enjoyed in transportation as a result thereof, possess a partial monopoly and if the decree be modified as prayed the distribution of many important food products will be left practically in the hands of a few large packers who will be enabled, because of their special advantages to monopolize such business and fix at will the prices of and restrain trade in interstate commerce in said food products.

21. Interveners further show that the defendants to said decree have a legitimate field for their operation in business of packing and distributing meat and meat products as to which business said decree does not limit them nor do interveners pray that there should be any interference therewith.

Wherefore, premises considered, interveners pray that any motion to modify said decree of February 27, 1920, be denied, but in the alternative, should the court deem it proper to consider said motion, that there be no action thereon until testimony has been taken and a full hearing had, and interveners pray for such other and further relief as they may show themselves entitled to upon the further hearing of this cause.

Southern Wholesale Grocers Association, Henry Sears Company, Mason Ehrman & Company, John Hoffman & Sons Company, J. M. Radford Grocery Company, Southern Distributing Company, Oliver Finnie Grocery Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rappides Grocery Company, Interveners, by Edgar Watkins, Attorney. Hoke Smith, Washington, D. C., and Edgar Watkins, Atlanta, Ga., Attorneys for Interveners.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

[fol. 138] IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION FOR LEAVE TO INTERVENE—Filed September 19, 1921

To the Honorable Judges of the Supreme Court of the District of Columbia:

The petition of the National Wholesale Grocers Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

1. Your petitioner, National Wholesale Grocers Association of the United States, is a voluntary and unincorporated association, having its principal place of business in New York City in the State of New York, composed of upwards of fourteen hundred individuals, partnerships and corporations engaged in the wholesale grocery business throughout the United States, and makes this petition for leave to intervene in the above entitled case.

2. This proceeding was commenced by the United States of America against the defendants for the purposes, among others, of enjoining defendants from continuing any contract, combination or conspiracy in restraint of trade or commerce in the purchase of live stock or other products handled by them and of restraining defendants from monopolizing or attempting to monopolize trade or commerce in such products; and of requiring defendants to divest themselves from dealing in food substitutes or unrelated commodities as specifically defined in the petition, which unrelated commodities included a general line of grocery products such as are usually dealt in by wholesale grocers in the United States.

3. Thereafter, on February 27, 1920, a decree was entered in this court on the written consent of all the defendants wherein and whereby, among other things, said defendants were perpetually enjoined and restrained from manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in such food substitutes or unrelated products consisting of general line of grocery products. Such food substitutes and unrelated products are generally dealt in by all wholesale grocers and in particular by the members of your petitioner's association.

4. Prior to the date of said decree and prior to the institution of said proceeding; various investigations were made by Congressional Committees, by the Federal Trade Commission and the Department of Justice, all of which showed [fol. 139] or tended to show, in accordance with the findings of such investigating bodies, that said defendants in this action were guilty of violations of the Act of July 1890, known as the "Sherman Act" and the Act of September 26, 1914, known as the "Federal Trade Commission Act", and that such actions created or tended to create a monopoly in the sale of food products.

5. Prior to the entry of said decree your petitioner, although not a party to said decree, took part in conferences with the representatives of the Department of Justice leading up to the entry thereof, inasmuch as the actions of defendants injuriously affected the business of the members of your Association were to a large extent adjusted by reason of the entry of said decree were in part for the purpose of terminating and did tend to terminate said injurious acts and the differences and controversies between the defendants and the members of your Association were to a large extent adjusted by reason of the entry of said Decree.

6. On or about July 1, 1919 and prior to the entry of said Decree, your petitioner instituted a certain proceeding before the Interstate Commerce Commission against the Director General of Railroads and the principal railway carriers in the United States, being known as Docket No. 10745 on the Docket of the Interstate Commerce Commission, in which proceeding your petitioner alleged that the defendants herein were receiving certain unjust, unreasonable and preferential rates and privileges in violation of the Acts to regulate interstate commerce. Thereafter the principal defendants herein intervened in said proceeding and having consented to the Decree entered by said court, offered said decree in evidence in support of a defense urged by them that having abandoned the grocery businesses in which they had heretofore embarked they would no longer be in competition with the members of your petitioner's Association. In the opinion of the Interstate Commerce Commission dated June 22, 1921 and reported in Volume 62, p. 375 of the opinions of said Commission in denying certain of the relief sought by your petitioner, said Commission emphasizes the entry of the decree in this case as granting your petitioner to a large extent the relief sought.

7. Your petitioner respectfully represents to this court that to modify or in any way lessen the restraints contained in said Decree entered in this case would result in defendants obtaining a substantial control of the business of dealing in food products in the United States and would tend to a monopolization by the defendants of such business. Your petitioner believes that such result would be inimical and injurious to the welfare of the public and that in par-

ticular the members of your petitioner's Association, apart from such public interests have a direct and special interest and that such modification would tend to the destruction of your petitioner's business.

Wherefore your petitioner prays that an order may be granted permitting your petitioner to intervene in this proceeding without prejudice to the proceedings hereto-[fol. 140] fore had therein and that your petitioner be notified of all further proceedings herein and have such other and further relief as may be just in the premises.

National Wholesale Grocers Association of the United States, by Breed, Abbot & Morgan, 32 Liberty Street, Borough of Manhattan, New York City; Harry W. Van Dyke, Woodward Building, Washington, D. C., Attorneys for Petitioner.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 141] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO SET ASIDE ORDER GRANTING LEAVE TO INTERVENE, &c.—Filed September 24, 1921

* * * * * * *

Comes now the petitioner, the United States of America, in the above-entitled cause and moves the Court to set aside and vacate the order heretofore entered, without notice and without prejudice, by this Honorable Court on the tenth day of September, 1921, in this cause, ordering that the Southern Wholesale Grocers Association, Henry G. Sears Company, Mason Ehrman & Company, John Hoffman & Sons Company, J. M. Radford Grocery Company, Southern Distributing Company, Oliver Finnie Grocers Company, Hall Grocery Company, Albert Mackie & Company, The Hicks Company, W. D. Cleveland & Sons, and Rapides Grocery Company have leave to intervene and become parties herein.

Peyton Gordon, United States Attorney; Herman J. Galloway, Special Assistant to the Attorney General, Attorneys for the United States of America.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED PETITION OF SOUTHERN WHOLESALE GROCERS' ASSOCIATION—Filed October 13, 1921

* * * * * * *

To the Honorable the Judges of said Court:

Come now the Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman and Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Co. Ltd., The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Company, and the Oliver Finnie Grocery Co., and by leave of the Court amend [fol. 142] their intervention filed herein on September 10, 1921, and for amendment and paragraphs of said intervention as follows:

21

Interveners other than the Southern Wholesale Grocers' Association are engaged, as aforesaid, in selling grocery items, among which items they are engaged in selling those things prescribed in paragraphs 4 and 5 of the decree entered herein on the 27th day of February, 1920, Southern Wholesale Grocers' Association is composed of members, as aforesaid, whose members are likewise engaged in buying and selling said commodities. Interveners other than Southern Wholesale Grocers' Association and the members of the Southern Wholesale Grocers' Association buy said commodities and have them shipped in interstate commerce, and each of the businesses of said interveners and said members is in selling said commodities for shipment among the States of the United States. Said interveners and the members of said Association, as well as the defendants herein, are engaged in interstate commerce and these interveners and the members of the Southern Wholesale Grocers' Association here now make as their own the allegations of the original petition filed by the United States herein and interveners say that the violations alleged in the original petition herein of the anti-trust laws of the United States are such violations as would cause loss and damage to the interveners other than the Southern Whole-

sale Grocers' Association, and would cause loss and damage to the members of the Southern Wholesale Grocers' Association, and interveners, composed of corporations and an association, are under Section 16 of the Clayton Act, entitled to sue for the injury and damage threatened against them by the acts alleged against the defendants in the original petition herein.

22

Interveners further show that the petition filed by the United States in this cause alleges violations of the anti-trust laws, and interveners are informed and believe, and believing so allege, that prior to the granting of the injunction in this cause on the 27th day of February, 1920, defendants jointly and in co-operation were selling the commodities described in paragraphs 4 and 5 of said decree heretofore entered in this cause, in interstate commerce, and in the manner and method of conducting said business, as alleged in the original petition herein, were guilty of violations of the anti-trust laws of the United States, which violations threatened loss and damage to interveners and to the members of the Southern Wholesale Grocers' Association. Interveners here make part of this intervention the allegations of the original petition filed herein and say that if the injunction heretofore granted in this cause should be modified so as to permit defendants to return to the status existing prior to the injunction of February 27, 1920, defendants would continue their violations of the anti-trust laws to the injury and damage of interveners.

[fol. 143] 23

Interveners further show that under Section 16, of the Clayton Act, which said Act is one of the anti-trust acts of the United States, they had the right and each of them had the right at the time the United States filed its petition herein to ask and receive injunctive relief. If the filing of this action gives this court exclusive jurisdiction of all questions arising out of the violations of the anti-trust laws alleged in the petition herein, interveners could not now file an independent suit. If the right remains to file an independent suit, then to file such suit in behalf of interveners and others similarly situated would involve a multi-

plicity of suits. Whatever the rights of interveners and other wholesale grocers they have a direct interest in this litigation and in the subject matter of this action, one special to themselves, differing from that of the general public, and under the laws and the principles of equity, and under the equity rules binding on this court, interveners are proper parties to this proceeding. Only in this cause and court where jurisdiction has been obtained of the subject matter and of the defendants can there be full and adequate relief to interveners and others with like interest.

24

Interveners have been informed, and believe, and believing so allege, that the Department of Justice, representing the United States herein, has in contemplation a modification of the decree of February 27, 1920. Interveners are further informed, and believe, and so allege, that said Department of Justice has prepared a motion to modify said decree, which motion it has served upon the defendants herein, and that the defendants have either agreed to the motion or agreed not to oppose the motion. Interveners are unable fully to set out said motion because upon application to Mr. H. J. Galloway, Special Assistant to the Attorney General, for opportunity to see said motion, they were denied such opportunity; but interveners on information and belief allege that the purpose of said motion is for such a modification of said decree as would greatly damage and injure these interveners, and would substantially vacate said decree in so far as it prevents the defendant from engaging in the sale of commodities unrelated to the principal business of defendant, in which commodities interveners, except the Southern Wholesale Grocers' Association, are engaged in selling. Interveners further show on information and belief that it is proposed especially to strike from said decree all of paragraph four thereof, and the parts of other paragraphs having a purpose similar to that of paragraph four. The Department heretofore, on the 9th day of September, 1921, permitted counsel for interveners to state generally the objections of interveners to a modification of said decree, and interveners are now informed, and being informed believe, and allege, that said Department proposed to permit them a hearing before the Honorable Herbert J. Galloway, a Special Assistant to

the Attorney General, and the Solicitors, respectfully of [fol. 144] the Departments of Agriculture and of Commerce and Labor. Interveners are advised, and being so advised, allege that the said board before which it is proposed to grant interveners a hearing, is a non-judicial board, with no power, authority or jurisdiction to hear or decide the rights of these interveners; that said board could not subpœna or swear witnesses, and that only in this court and cause can the facts necessary to a proper determination of the issues herein be adduced, and interveners here and now offer at such time and place as the court may set, to produce witnesses who will testify to the facts, material and necessary, for the court to know before determining what modification, if any, should be permitted of said decree. The proposal of the Department of Justice to grant the form of a hearing as aforesaid to interveners, and to determine for itself by an agreement with the defendant what modification shall be made in said decree, denies interveners that due process of law and that hearing which they are entitled to have, and which they cannot obtain except before this Court and in this cause.

Wherefore interveners pray as in their original intervention, and that this their amended intervention be allowed and filed, and that they may have notice and opportunity to be heard on any and all motions hereafter filed with the right to answer such motions or demur thereto as they may be advised.

Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman & Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rapides Grocery Company, Oliver Finnie Grocery Company, Interveners, by Edgar Watkins, Attorney. Hoke Smith, Edgar Watkins, Attorneys for Interveners.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

[fol. 145] It is ordered that the above and foregoing amendment to the intervention filed by Southern Wholesale

Grocers' Association et al., on the 10th day of September, be and the same is allowed without prejudice to the pending motion.

Wendell P. Stafford, Judge.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OF DECISION ON MOTION TO STRIKE OUT, &C.—Filed November 1, 1921

* * * * * * *

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

1. The decree was, in part, at least, the fruit of their own efforts;

2. They abandoned the pursuit of other remedies in reliance upon this decree;

3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf;

4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection;

5. The decree ought not to be modified unless the Court is convinced that the public interest requires it; and the petitioners fairly represent a large and well defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the Court facts or reasons which, among others, the Court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would be interveners who may consider themselves

interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out.

Wendell P. Stafford, Justice.

[fol. 146] In Supreme Court of District of Columbia

Order Overruling Motion to Strike Out—Filed November 5, 1921

* * * * * * *

The motion of the plaintiff to strike out the intervening petition of the Southern Wholesale Grocers Association et al. is overruled for the reasons stated in the filed memorandum of decision.

Wendell P. Stafford, Justice.

In Supreme Court of District of Columbia

Order Allowing Intervening Petition to be Filed—Filed November 5, 1921

* * * * * * *

The petition of the National Wholesale Grocers Association of the United States for leave to intervene herein is granted for the same purpose and to the same extent as the Court has already allowed the intervention of the Southern Wholesale Grocers Association, namely, to be heard in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree.

Wendell P. Stafford, Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA.

PETITION IN INTERVENTION—Filed November 8, 1921

* * * * * * *

TO the Honorable Judges of the Supreme Court of the District of Columbia:

Your intervener, National Wholesale Grocers Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

I. Your petitioner, National Wholesale Grocers Association of the United States, is a voluntary and unincorporated association having its principal place of business in New York City, State of New York, composed of upwards of 1,400 individuals, partnerships and corporations engaged in the wholesale grocery business throughout the United States.

II. Your intervener represents that the decree entered herein on February 27, 1920 was entered for the purpose of restraining and terminating certain contracts, combinations and conspiracies in restraint of trade or commerce on the part of defendants in the sale of food products and for the purpose of terminating certain monopolizations in such sale of food products on the part of defendants. Such decree prohibited defendants from dealing in certain lines [fols. 147 & 148] of grocery products and thereby, in large part, terminated certain advantages and preferences enjoyed by the defendants in competition with the members of your intervener's association in the sale of food products. In order to terminate such preferences your intervener had previously instituted a proceeding before the Interstate Commerce Commission against the Director General of Railways and principal railway carriers known as docket No. 10745 on the docket of the Interstate Commerce Commission and in determining such proceedings, said Interstate Commerce Commission, in its opinion which is reported in Volume 62, page 375 of the opinions of said Commission, denied certain of the relief sought by your intervener on the ground that the entry of the consent decree herein had largely eliminated the competition existing between mem-

bers of your intervener's association and the defendants herein.

III. Your intervener represents that to modify or any way lessen the restraints contained in said consent decree of February 27, 1920 would result in defendants obtaining a large degree of control of the business of dealing in food products in the United States and would tend to result in a monopolization of such business by the defendants. Your intervener believes that such result would be inimical and injurious to the welfare of the public and that your intervener and the members of your intervener's Association have a special and direct interest and that such modification would tend to the destruction of their respective businesses.

Wherefore your intervener prays that any motion to modify said decree of February 27, 1920 be denied or in the alternative should this Court consider any motion to modify said decree that no action be had except on notice to your intervener and after a full hearing.

Breed, Abbott & Morgan, No. 32 Liberty Street, New York City. Harry W. Van Dyke, Woodward Building, Washington, D. C.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 149] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDMENT PRAYING LEAVE TO SUBSTITUTE NAME—Filed June 14, 1922

* * * * * * *

Comes now American Wholesale Grocers' Association and shows that:

1

Under its former name, Southern Wholesale Grocers' Association, it filed on September 10, 1921 an application to intervene herein, which application was granted and the intervention filed on the same day.

2

Likewise under its former name, this intervener filed an answer to the application of California Cooperative Canneries.

3

On May 10, 1922, by proper corporate action, the name Southern Wholesale Grocers' Association was changed to American Wholesale Grocers' Association and such action was certified to and filed with the Secretary of the State of Tennessee and with the County Clerk of Shelby County, Tennessee, the County and State where movant is incorporated.

4

No other change was made in the powers, purposes and corporate rights of movant than the change in name aforesaid.

Wherefore it is prayed that said petition of intervention, the order granting same, and the answer to the application of California Cooperative Canneries be amended by substituting therein for Southern Wholesale Grocers' Association, American Wholesale Grocers' Association.

Edgar Watkins, Attorney for American Wholesale Grocers' Association.

Read and considered. It is ordered that as prayed, American Wholesale Grocers' Association be and the same is hereby substituted for Southern Wholesale Grocers' Association, and that the intervention of Southern Wholesale Grocers' Association hereafter proceed in the name of American Wholesale Grocers' Association.

This 14th day of June, 1922.

Jennings Bailey, Judge.

[fol. 150] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed April 23, 1925

* * * * * * *

This case comes on to be heard upon the motion of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, and

also upon the motion of the California Co-operative Canneries to vacate or modify the decree or suspend its operation.

The first motion (the motion of the Swift and Armour groups of defendants) is based upon three grounds:

1. That the decree is void because the court was without jurisdiction for the reasons that there were no facts adjudicated; it violated the fifth amendment to the Constitution; there was no case or controversy before the court, and the decree was beyond the jurisdictional power of the court in any event.

2. The decree is void because it is violative of the anti-trust laws themselves and neither the consent of the Attorney General nor the consent of the defendants could validate it.

3. The Attorney General was without power or authority to consent to the decree on behalf of the United States.

As to the first ground, that the court was without jurisdiction, I think counsel have somewhat confused the situations where a decree is erroneous on the face of the record and where it is void for want of jurisdiction. A decree may so clearly adjudicate matters which are beyond the province of the court of equity that it may be void on its face. On the other hand, a decree in a case where the jurisdiction [fol. 151] of equity might be disputed, might be erroneous and subject to correction on appeal or a bill of review, and yet not void. In this particular case, I think the subject matter of the decree is certainly of the same nature as that conferred by statute upon the federal courts sitting as courts of equity, and if the parties now think that its provisions were somewhat broader than those embraced in the pleadings and somewhat beyond the powers conferred by statute, it is too late now to raise this objection and especially by mere motion. See Evers vs. Watson, 156 U. S. 527, and cases there cited on page 533.

It is not sought to set aside the decree on the ground that the consent of the defendants was obtained by fraud or duress, or that the decree was entered by accident or mistake. The parties consented to the decree and their consent evidently showed their construction of the law at the time the decree was entered, and in my opinion they are now estopped from contesting its validity.

While it is true that there was no adjudication of facts before the court, there was the consent of the parties. The bill was filed to enjoin future acts. The defendants consented that they should be enjoined from doing such future acts, and no other adjudication was necessary.

As to the objection that it violates the fifth amendment, it is sufficient to say that the parties consented to the decree.

The same reasoning will apply to the second ground; and as to the third ground that the Attorney General was without power or authority to consent, the Attorney Gen- [fol. 152] eral is the duly authorized counsel for the United States, and a part of the executive department of the government, and I have no doubt of his power to consent to the entry of such a decree. He has consented to the entry of many other decrees and up to this time his principal has not come before the court to repudiate his authority.

The motion of these defendants, therefore, will be overruled.

The motion of the Canneries presents a very different case. The Court of Appeals has sustained its right to intervene based upon the allegations in its petition. The original decree in this cause was entered without the taking of any proof and without the admission of any facts, and may be considered as little more than a contract between the parties sanctioned by the court. Had this decree been entered upon the taking of proof, either by formal testimony or by the admissions of the parties, I think that the burden would have been upon the intervenor to show that the actual facts did not justify the decree. The pleadings show that the intervenor has a substantial interest, that its contractual rights have been impaired by the entry of this decree, and that it is damaged by it. If there was even proof to show that the defendants had violated or were about to violate the laws of the United States, the situation would be different, but as I have said, there was no such proof. It is clear that the Canneries is being damaged by the continuance of this decree, and while I do not think that the decree should be vacated in the present state of the pleadings, I do think that the operation of the decree [fol. 153] should be suspended. My first view was that it should be suspended merely in so far as the Canneries were

concerned, but all of the parties have agreed that if it should be suspended or modified, it should be suspended or modified as a whole. There seems to be little difference in effect between vacating the decree and suspending its operation, but as in my opinion the decree is valid as long as it stands, and no proof has been taken to show that it was improperly entered, all that should be done now is to suspend the operation of the decree.

Decree accordingly.

Jennings Bailey, Justice.

[fol. 154] IN SUPREME COURT OF DISTRICT OF COLUMBIA

DECREE SUSPENDING IN WHOLE OPERATION OF CONSENT DECREE OF FEBRUARY 27, 1920—Filed May 1, 1925

* * * * * * *

This cause came on to be further heard at this term of court on the motions of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, entered herein, and also upon the motion of the intervener, California Cooperative Canneries, to vacate or modify the decree or suspend its operation; and after argument by counsel for the respective parties in interest and consideration by the court it is thereupon, this 1st day of May, 1925, hereby—

Adjudged, ordered and decreed as follows:

1. The said motions of the Swift and Armour groups of defendants are overruled.

2. The said motion of the California Cooperative Canneries to suspend the operation of the said decree of February 27, 1920, is granted and the operation of the said decree as a whole is suspended until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

By the Court:

Jennings Bailey, Justice.

[fol. 155] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Equity. No. 37623

UNITED STATES OF AMERICA, Plaintiff,

v.

SWIFT & COMPANY et al., Defendants

FINAL DECREE ON MANDATE—Filed July 24, 1929

This cause came on for hearing on the mandate of the Court of Appeals of the District of Columbia hereinbefore filed and entered, and upon the certified copy of mandate of the Supreme Court of the United States to said Court of Appeals of the District of Columbia transmitted by it to this Court, and upon consideration thereof,

It is ordered, adjudged and decreed:

1. That the judgment of the Court of Appeals of the District of Columbia and the Supreme Court of the United States shall be and the same is hereby made the judgment of this Court.

2. The final decree on mandate of the Court of Appeals of the District of Columbia hereinbefore entered Septembered 13, 1924, shall be and the same is hereby vacated, set aside and held for naught, and that leave to intervene, granted by said decree to the California Co-operative Canneries, shall be and the same is hereby revoked.

3. The petition of the said California Co-operative Canneries for leave to intervene herein shall be and the same is hereby dismissed.

[fol. 156] 4. That so much of the decree of this Court made and entered May 1, 1925, as suspended the operation of the Consent Decree of February 27, 1920, shall be and the same is hereby vacated and set aside, and said Decree of 1920 shall be and the same is hereby restored to full force and effect.

5. That the motion of the California Co-operative Canneries to vacate and set aside said Consent Decree of Feb-

ruary 27, 1920, shall be and the same is hereby denied and dismissed.

6. That, motions having this day been filed on behalf of certain defendants for an extension of time for compliance with the provisions of said Consent Decree of 1920, the time within which to comply with the Second, Third and Fourth paragraphs of said Decree is hereby extended until the hearing on said motions, which hearing is set for October 2, 1929; provided that nothing herein contained shall be construed to permit the defendants to enter into any contracts or commitments which will increase or augment the difficulty of effectuating final compliance with said Decree.

7. That, no service of notice of this hearing having been effected upon the Morris and Wilson groups of defendants, with the exception of such of said groups as are represented of record by William R. Brown, James D. Cooney and John M. Lee, attorneys, it is further ordered that said remaining defendants shall, on or before October 2, 1929, show cause, if any exists, why they should not be fully bound by the terms and provisions of this decree, and that notice hereof may be served upon said remaining defendants in accordance with Rule 20 of the Law Rules of this Court, by mailing such notice on or before September 1, 1929.

[fol. 157] To this order an exception is noted by William R. Brown and James D. Cooney, counsel of record for certain of the Wilson group of defendants.

By the Court:

Jennings Bailey, Justice.

Dated this 24th day of July, 1929.

[fol. 158] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF SWIFT GROUP OF DEFENDANTS FOR EXTENSION OF TIME—Filed July 24, 1929

To the Honorable Justices of the Supreme Court of the District of Columbia:

Now comes the Swift group of defendants by Frank J. Hogan, Charles A. Douglas, and Henry Veeder, their attor-

neys, and respectfully represents and shows unto the Court as follows:

That the decree entered herein on February 27, 1920, required these defendants to divest themselves of ownership in public stock yard market companies and stock yard terminal railroads.

That notwithstanding diligent effort on the part of these defendants they were unable to dispose of their interests in said public stock yard market companies and stock yard terminal railroads before May 1, 1925, on which date this Court suspended the operation of said decree in its entirety until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

That an order to abrogate said suspension order of May 1, 1925, was entered by this Court on 24th day of July, 1929.

That the nature and magnitude of the task of divesting themselves of their interests in said public stock yard [fol. 159] market companies and stock yard terminal railroads is such that these defendants should be allowed at least one (1) year within which to make such divestment.

That these defendants will proceed to do the other things required by the decree as rapidly as is consistent with the nature of the business involved, which these defendants believe can be done within one (1) year.

Wherefore said defendants pray that they be allowed one (1) year within which to divest themselves of their ownership and interests in public stock yard market companies and stock yard terminal railroads, and to do the other things required by said decree.

Frank J. Hogan, Chas. A. Douglas, Henry Veeder, & Nelson T. Hartson, Attorneys for Swift Group of Defendants.

Acknowledgment of Service

Service of a copy of the foregoing petition and notice of hearing is acknowledged this 24th day of July, 1929.

H. B. Teegarden, Spec. Asst. to the Attorney General; —— ——, Attorneys for United States.

[fol. 160] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF ARMOUR GROUP OF DEFENDANTS FOR EXTENSION OF TIME—Filed July 24, 1929

To the Honorable the Supreme Court of the District of Columbia:

Now comes the Armour group of defendants, by Frank J. Hogan, Conrad H. Syme and Chas. J. Faulkner, Jr., their attorneys, and respectfully show the Court that the Decree herein required said defendants to discontinue manufacturing and dealing in certain commodities of the character mentioned in Paragraphs Fourth and Fifth of said Decree, and to dispose of their interests in corporations manufacturing said commodities.

That this Court, upon the motion of the California Co-Operative Canneries, by order entered May 1, 1925, suspended the operation of said Decree as a whole until the further order of the Court, to be made, if at all, after a full hearing on the merits according to the usual course of Chancery proceedings.

That said defendants, relying upon said order of suspension, engaged in the manufacture, sale and distribution of certain of said commodities, handling, among others, the products of the California Co-Operative Canneries, under an arrangement entered into after May 1, 1925, which was subject to the further order of the Court in this proceeding. That pursuant to such arrangement, said defendants have handled approximately sixty-five percent of each season's [fol. 161] pack of canned fruits and vegetables of the California Co-Operative Canneries since May 1, 1925, and in making its plans for this year's packing season, which is now at hand, said California Co-Operative Canneries has contracted for large quantities of supplies, such as sugar, cans and packing material, and has arranged for the delivery to it of large amounts of the various kinds of California fresh fruits and vegetables for canning, upon the belief that said defendants would market about seventy-five percent of the current season's pack.

That the California Co-Operative Canneries has no marketing organization able to sell on the general market the entire quantity of canned fruits and vegetables which it has planned to pack this season and will be unable to organize one within the short time intervening between this date and the marketing season. Consequently, if it is suddenly deprived entirely of said defendants' extensive marketing facilities, irreparable damage will result to said company and to the co-operative group of growers constituting its members.

That said defendants have heretofore disposed of their interests in a number of concerns engaged in the manufacture of certain of the commodities mentioned in said Decree; that the only interests in said manufacturing concerns of which said defendants have been unable to dispose consist of a grape juice and fruit preserving plant at Westfield, New York, and a seven-eighths stock interest in the National Fruit Canning Company of Seattle, Washington; that there are surrounding these plants a large number of farmers and growers of fruits who are dependent upon the operation of these factories for the sale of their fruits, which are rapidly maturing for market, and to discontinue the operation thereof at this time would deprive such per- [fol. 162] sons of their marketing outlets without any compensatory benefit whatever to the public generally, and without giving them any opportunity to make other marketing arrangements.

That as a result of the operations aforesaid, some of said defendants now have on hand unsold considerable quantities of certain of the articles mentioned in Paragraphs Fourth and Fifth of said Decree, which cannot be sold and disposed of in the regular and orderly course of business within a period of less than one year.

That said defendants have heretofore sold and disposed of all of their interests in public stockyard market companies and stockyard terminal railroads, with the exception of their interests in The Jersey City Stock Yards Company and the Pittsburgh Union Stock Yards Company.

Wherefore said defendants pray that they be allowed one year within which to cease handling and dispose of said commodities, to divest themselves of their interests in corporations and plants manufacturing such commodities

and to dispose of their remaining interests in public stockyard market companies and stockyard terminal railroads.

(Signed) Frank J. Hogan, (Signed) Conrad H. Syme, (Signed) Chas. J. Faulkner, Jr., (Signed) Nelson T. Hartson, Attorneys for Armour Group of Defendants.

[fol. 163] Notice of Hearing

The plaintiff United States of America will please take notice that the foregoing petition will be for hearing on —, 192-, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

—— ——, Attorneys for Petitioners.

Acknowledgment of Service

Service of a copy of the foregoing petition and notice of hearing is acknowledged this 24th day of July, 1929.

(Signed) H. B. Teegarden, Spec. Asst. to the Atty. Genl.; —— ——, Attorneys for United States.

[fol. 164] In Supreme Court of the District of Columbia

[Title omitted]

Amended Petition of Defendants Swift & Company and Others for Modification of Consent Decree of February 27, 1920—Filed April 2, 1930

The amended petition of the defendants Swift & Company and others respectfully shows unto the Court as follows:

Swift & Company (Illinois); Swift & Company (West Virginia); Swift & Company, Inc. (Kentucky); Swift & Company, Ltd. (Louisiana); Swift & Company (Maine); Swift Beef Company; United Dressed Beef Co. of New York; J. J. Harrington & Company, Inc.; Bimbler Company; G. H. Hammond Company; Omaha Packing Company; Plankinton Packing Company; Sturtevant & Haley Beef & Supply Company; E. K. Pond Company; Van Wagenen & Schickhaus Company; Hammond Beef Company; A. Canfield Commission Company; H. C. Derby Com-

pany; Metropolitan Hotel Supply Company; Louis F. Swift; Edward F. Swift; Charles H. Swift; Gustavus F. Swift, Jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Charles A. Peacock; Wilfred [fol. 165] W. Sherman; John M. Chaplin; William B. Traynor; defendants in the above entitled cause, by their attorneys Charles A. Douglas, Henry Veeder, Nelson T. Hartson and Frank J. Hogan, petition the Court for certain modifications of the original decree entered in this cause on February 27, 1920, commonly referred to as "Packers Consent Decree", on account of conditions now existing and because of certain radical and revolutionary changes, which have occurred since its entry, in economic conditions, merchandising methods, statute law of the United States and the interpretations thereof, which make this decree unjust, unfair, inequitable and oppressive to these defendants, unnecessary and against the public interest. These defendants respectfully show unto the Court:

I. As to Revolutionary Changes in Marketing Methods Since 1920

1. That since 1920 there have been far reaching changes in the methods of distribution; that these changes have gained such momentum during the past ten years and have developed so far beyond what was previously considered reasonably possible as to amount virtually to a revolution in distribution methods; that the movement has taken various forms, differing in degree according to the character of the product, but affecting the distribution of practically all products; that this movement has been characterized chiefly by integration, mass selling, diversification of products handled, and the development of a brand consciousness on the part of the consuming public.

2. That the movement toward integration, by which is meant the consolidation of the various marketing functions so that goods are made to move from manufacturer to con- [fol. 166] sumer without the intervention of independent middlemen, has in some cases been initiated by the manufacturer, causing him to establish his own retail outlets, while in other instances, retail stores already established have sought to enter the manufacturing field and produce some or all of the products they sell; that this in turn has

forced wholesalers and other middlemen, who were found useful under the old distribution system, to form their own retail outlets and enter the manufacturing field.

3. That along with the movement toward integration has gone mass selling wherever it has been possible to obtain a standardization of products thru mass production methods; that since 1920 mass production principles have been applied all along the line in selling operations; that it is but natural that the mass production principles which were emphasized so strongly and developed so extensively during the war as a means of producing the maximum quantity of products at the minimum cost should, at the conclusion of the war, have been brought right over into the field of selling.

4. That production costs have been reduced wherever mass production principles have been applied, and mass distribution has reduced costs to the ultimate consumer; that with manufacturers competing with manufacturers and retailers with retailers, each trying to get as large a portion of the consumer's dollar as possible, mass selling has become almost the universal rule in this country; that it may almost be said that mass selling is a discovery of the present decade of hardly less importance than the discovery of such forces as steam and electricity.

5. That the factor of brands and brand consciousness on the part of consumers has also played a conspicuous part [fol. 167] in the new distribution methods, and the present decade more than any other may rightly be called the "Brand Con-cious Age"; that the reason for the growing importance and multiplication of brand is that standardization under mass production methods implies uniform quality; that the consumer comes to know that when he buys a particular brand rather than bulk goods he is obtaining a definite quantity and quality of product; that under modern advertising methods, brand names have come to possess substantial money value to the manufacturer or retailer of the product, and the necessity of protecting such brands has forced many manufacturers into the retail business, or has forced retailers to manufacture their own brands.

6. That as an illustration of the extent to which integration and mass selling have grown during the past ten years,

there may be cited the high degree of integration which has been attained in the oil industry; that it was not many years ago that the oil business was one made up of separate producers, manufacturers, wholesale distributors and retailers, while at the present time it is a commonplace fact that all of the larger oil companies which produce the oil also do their own refining and, for the most part, their own retailing; that integration has become almost complete and the number of stations thru which gasoline is sold to consumers has grown by leaps and bounds.

7. That similar movements have taken place in other fields as, for example, in 1927 there were 347 chains operating 3,155 drug stores, and from 1920 to 1929 the leading chain drug stores increased their sales 160%, while the leading wholesale druggists increased their sales only 23%; that every large drug chain now manufactures a definite quantity of the drugs it merchandises at retail.

[fol. 168] 8. That in 1927 there were 230 chains having 2,180 stores selling men's clothing and furnishings; 215 chains having 2,036 stores selling women's apparel, and from 1920 to 1929 the leading chain stores handling wearing apparel for men and women increased their sales 333%, while the wholesale firms handling men's clothing and women's clothing had an actual decrease in sales.

9. That in 1920 there were 27,000 retail grocery chain stores, and in 1929 there were approximately 1,000 grocery chains operating 75,000 stores; that between 1920 and 1929 the leading chain grocery stores increased their sales 255% while the sales of the leading wholesale grocers actually declined.

10. That the great mail-order houses and department stores have also had an astounding growth in sales since 1920; that in the latter year the large mail-order houses had scarcely any retail or department stores, while at the beginning of 1930 Sears Roebuck & Company had in operation 70 large department stores and 214 smaller retail stores and 31 Class "C" stores; that Montgomery Ward & Company has put 532 retail stores in operation during the past two years and recently announced that it would open 1,500 retail stores—one in each of the 1,500 cities having a population of 5,000 or more.

11. That in addition to the trend toward integration, mass selling, and the development of brands, there has been a strong tendency to diversify the kinds of products handled; that in drug retailing, for example, the food business is becoming increasingly important; grocery chains are selling cigarettes and tobacco; cigar chains are selling candy and minor drug items; men's hat chains are adding coats as well as women's hats and sport clothes; grocery chains are adding meat, household utensils, drug items, candy, soft drinks, lunch counters, and hardware; the five [fol. 169] and ten cent stores, which have increased their sales over 150% since 1920, carry food products, piece goods, hosiery, etc.; and shoe chains frequently sell hosiery and knit goods.

12. That the revolutionary changes which have been taking place are a healthy sign of competition; that they are in the public interest; and that the changes in the methods of distributing food are nothing more than part of a larger movement applying to the distribution of all standardized products; that the Consent Decree prohibits these defendants from participating in the new highly competitive distribution movement, from integrating in line with the modern trend, from developing brands in non-meat lines, from fully applying mass production and mass selling principles, and, therefore, from doing all they can with the aid of present facilities to bring about lower distribution costs on foods or to improve service to customers; that the Consent Decree unnecessarily restrains these defendants, is oppressive and injurious, substantially lessens competition, and is against the public interest.

II. As to Retail Chain Store Developments

1. That in 1920 at the time of the entry of this Decree, chain grocery stores were a relatively small factor in the distribution of food products; that the quantities of meats which they distributed at that time were negligible and they had shown no marked tendency toward expansion in the field of retail meat distribution: that the total number of chain grocery stores in the United States increased from approximately 27,000 in 1920 to approximately 75,000 in 1930; that the total sales of grocery chains in the United States have increased from approximately $700,000,000 in 1918 to approximately $3,500,000,000 in 1929; that the total

[fol. 170] sales of leading grocery chains increased approximately 255 per cent from 1920 to 1929 as computed and published by the Federal Reserve Board; that in 18 of the 24 largest cities of the United States the chain grocery stores are doing more than one-half of the retail grocery business; that in 10 of the largest cities they do 56.4 per cent of the retail grocery business; that in 5 of the largest cities they do 57.4 per cent of the total grocery business; and that in the entire United States they do in excess of 40 per cent of the total grocery business.

2. That The Great Atlantic & Pacific Tea Company, now a nationwide chain, has increased from 4,623 stores in 1919 to about 16,500 stores in 1930 and from $190,000,000 in sales in 1919 to approximately $1,100,000,000 in sales in 1929; that the Kroger Grocery and Baking Company increased from 780 stores in 1919 to 5,575 stores in 1930 and from $34,550,000 in sales in 1919 to $287,000,000 in sales in 1929, and in addition, said Kroger Grocery and Baking Company controls the parent Piggly Wiggly Corporation which operates 3,000 retail stores on a license and royalty basis; that the American Stores Company has increased from 1,151 stores in 1920 to 2,600 stores in 1930 and from $76,400,000 in sales in 1920 to $143,000,000 in sales in 1929; that Safeway Stores, Inc., was formed in 1926 with 834 stores and in 1930 had 2,660 stores and has increased in sales from $103,300,000 in 1928 to $213,000,000 in 1929; that other large grocery store chains have grown since 1920 to a corresponding extent; and that the indications are that their rapid growth will continue into the future.

3. That there are now approximately 1,000 regular grocery chains in the United States; that their total annual sales are nearly $3,500,000,000; that many of them are [fol. 171] large organizations strongly financed and firmly entrenched in the business; that the annual sales volume of many of them range from $50,000,000 to over $1,000,000,000 per annum; and that their number and strength show clearly that these defendants, if permitted to deal in the commodities prohibited by this Decree and to conduct retail meat markets, would not and could not constitute any monopoly or threat or danger of monopoly in retail trade and that they would not and could not restrain trade or commerce therein either now or in the future.

4. That in 1920, the chain grocery stores sold practically no meats and even as late as five years ago were an inconsequential factor in the meat trade; that in the last few years their expansion in that field has been aggressive and rapid; that the indications are that in the future their expansion in the field of retail meat distribution will be more rapid; that The Great Atlantic & Pacific Tea Company now has approximately 3,500 stores with meat departments and is carrying out a program of installing 5,000 to 10,000 meat departments in their stores within the next three to five years; that the Kroger Grocery and Baking Company now has approximately 3,000 stores with meat departments; that Safeway Stores, Inc. now has approximately 1,366 meat departments as compared with 289 in the year 1927, just after its organization; that American Stores Company now operates 1,000 meat departments; that other large chain store companies have installed meat departments in many of their stores and are rapidly installing others; that all chains are now operating a total of approximately 22,000 meat markets which means that about one-third of all chain grocery stores are selling meat and doing over 20 per cent of the total retail meat busi- [fol. 172] ness; that the trend in the chain grocery business is now definitely toward the establishment of general food stores as contrasted with grocery stores carrying grocery staples alone in 1920; that, for example, during 1929 the Great Atlantic & Pacific Tea Company closed a number of its small stores and opened large combination food stores substantially increasing sales per store; that said trend toward the establishment of general food stores and the rapid expansion of the grocery chains into the field of retail meat distribution which is gaining in momentum, means that the purchasing power for retail meat distribution is likewise rapidly becoming concentrated into a relatively small number of buyers; that said increasing concentration of the retail meat business into the hands of a relatively small number of companies constitutes a serious disadvantage and handicap to these defendants and will continue to do so as long as these defendants are prohibited by this decree from competing in the distribution of certain commodities therein named and selling meats at retail; and that the strong trend in the direction of the absorption of the larger part if not practically all of the

retail meat business by said grocery chains indicates with certainty a serious danger to the business welfare of these defendants unless this decree is modified so that these defendants will have the right to engage in said businesses also and compete with said grocery chains.

5. That since the entry of this decree, an entirely new development has occurred in the form of the establishment of Voluntary Chains of grocery stores, which are associations of formerly independent grocery stores, with varying degrees of centralization, organized chiefly for the purpose of obtaining the advantages of concentrated buying; that there are now approximately 421 such voluntary chains [fol. 173] scattered throughout the country, operating approximately 60,000 grocery stores; that said 60,000 grocery stores in voluntary chains are separate from and in addition to the 75,000 stores in regular chains as hereinabove alleged; that the voluntary chains and regular chains together operate approximately 135,000 grocery stores; that some of said voluntary chains are very large, that the Independent Grocers Alliance, for example, operates approximately 9,000 retail stores, Red and White stores, 4,500, Nationwide Stores, 2,500, Creasey Corporation, Inc., 9,300, Clover Farm Stores, 2,000, United Purity Stores, 1,200; that the trend in said voluntary chains is to become more and more centralized; that the movement toward the establishment of voluntary chains has been rapid and aggressive and is increasing rather than diminishing; that the largest number of stores in said voluntary chains, if not practically all of them, sell meat at retail; that said voluntary chains constitute a further concentration of the buying power for the sale of meats at retail; that said concentration is to the serious disadvantage and damage of these defendants and represents a grave danger in the future unless this decree is modified so that these defendants will also have the right to sell meats at retail; that the extent to which regular chains and voluntary chains have already been organized and established and their financial ability and size in the trade show the absolute unsoundness of any contention that these defendants could monopolize or threaten to monopolize retail food distribution or represent a danger of monopoly or restrain trade or commerce therein either now or in the future if permitted to enter the field of retailing meats and food products.

6. That it is the practice of the grocery chains, as well as other chains, to handle their own brands of goods either partly or exclusively; that goods bearing the private brand [fol. 174] of the grocery chains are manufactured either at the factories of the chains or under contract by some outside manufacturer; that either practice is prejudicial and damaging to the interest of the outside manufacturers because manufacturing such private brands at the factories of the chains takes the volume of goods so manufactured away from the outside manufacturers altogether, and when manufactured by the outside manufacturer under the private labels of the chains, places the outside manufacturer at the mercy of the chain as to that portion of the output of his factory devoted to such manufacturer; that the failure of the chain to renew the contract for private labeled goods or to renew it at a price which will show a profit means serious embarrassment to the manufacturer and perhaps loss or bankruptcy; that the practice of the chains of dealing largely or exclusively in their own private brands is prejudicial and damaging to these defendants in merchandising packing house products, and represents a serious and increasing danger to the business welfare of these defendants so long as this decree prohibits the defendants from establishing their own retail outlets; and that the sale of private branded goods is not susceptible of monopolization by these defendants.

7. That the modern trend in the merchandising of goods is strongly toward integration; that the integration movement has increased in momentum and size in the last ten years beyond anything anticipated or foreseeable in 1920; that it means the movement of goods direct from the producer to the consumer without the intervention of middlemen; that the service to consumers and efficiencies in such direct movement are much greater than could be obtained by the methods chiefly used in 1920 and prior thereto and [fol. 175] the savings to the consumer in such direct movement are very large; that manufacturers and merchandisers of goods who are unable to integrate or participate in such direct movement are at a serious disadvantage; that further growth and continuance of this trend means that those who do not join in it must eventually fail; that this trend is rapidly gaining a foothold in the packing industry

among non-defendant packers and grocery chains; that these defendants are prohibited by this Decree from integrating or moving packinghouse products direct from the producer to the consumer; and that such prohibition is injurious and damaging to these defendants in the conduct of their business and threatens their existence.

8. That the combined net profits for five large grocery chains, namely, The Great Atlantic & Pacific Tea Company, Kroger Grocery and Baking Company, American Stores Company, Safeway Stores, Inc., and National Tea Company, in 1928 averaged 2.7 per cent on sales as compared with an average of 1.3 per cent on sales for the four packer defendants in this case, and as compared with 1.5 per cent on sales for Swift & Company; that the average net profit of said five large grocery chains was 23 per cent on the net worth (capital stock and surplus) as compared with 5 per cent on the net worth for said four defendant packers, and as compared with 6.7 per cent on the net worth for Swift and Company; that the average net profits of said five large grocery chains on total assets were 16.6 per cent as compared with 3.2 per cent for said four defendant packers, and as compared with 4.3 per cent for said Swift & Company; that said five large chains made average sales of about $23.00 per dollar of fixed property investment as compared with average net sales of said four defendant packers of about $6.00 per dollar of fixed property investment; that said five large chains had an average of [fol. 176] four times the amount of business per dollar of fixed property as is done by said four defendant packers; that The Great Atlantic & Pacific Tea Company does about eight times as much business per dollar of fixed property as is done by said four defendant packers on the average and over five times as much business per dollar of fixed property investment as is done by said Swift & Company; that on the average said five large chains have only about 2 per cent of borrowed money invested in their business as compared with an average of about 30 per cent for said four defendant packers and about 24 per cent for said Swift & Company; that with the exception of the National Tea Company all of said large chains have investments in marketable securities, whereas said four defendant packers have

no substantial investments of that character; that the above mentioned financial data show that said five large chains are in a more liquid and stronger financial position than any or all of said four defendant packers, and do business on a much more profitable basis than any of said four defendant packers; that the above financial data further show that it would be impossible for these defendants to attain a monopoly in the chain store field, or dominate it, or restrain trade or commerce therein, or constitute any danger or threat of monopoly, domination, or restraint of trade, either now or in the future, and that this decree is unnecessary, unjust and oppressive to these defendants, substantially lessens competition, and is against the public interest.

9. That the steady growth in the number of chain stores since 1920 has made it more and more difficult for these defendants to utilize their distributing facilities profitably; that more and more chains have established their own depots from which they distribute to their retail stores thereby duplicating the branch house facilities owned by [fol. 177] these defendants; that the principal chains are planning the construction of more depots in the near future; that the chains which have established such depots insist on buying direct from the packing plants of these defendants at the F.O.B. Plant prices, which practice has two effects on the branch houses of these defendants, namely: to reduce steadily the volume of business of said branch houses and to increase in corresponding measure the expense of operating said branch houses; that these defendants must continue the operation of said branches if independent retailers are to have a dependable source of supply of packing house products; that the continuance of the growing practice of the chains to establish their own depots will increase the adverse effects upon said branch houses; that in view of the fact that the entry of the chains into the retail meat business has been recent and that they now handle about 20 per cent of the retail meat business of the country while they do about 40 per cent of the grocery business, it is certain that their growth in the retail meat business will be very rapid, at least until their volume of retail meat business corresponds to their volume of grocery business; that these defendants have already suffered losses

at certain branch houses by reason of the above facts; that any substantial increase in the warehousing depots of the chains will force these defendants to abandon a large number of their branch houses to the serious detriment of both the consuming public and the livestock producers; that these adverse effects upon the branch houses of these defendants can be obviated by permitting them to handle grocery products and to establish their own retail stores thereby assuring dependable outlets for their products and putting them on a basis of equality with chain stores.

10. That the methods used by the grocery chains in merchandising the branded products of these defendants [fol. 178] often work great injury to the reputation of the latter's products and narrow the retail outlet through which they may be sold; that it is the well-known and commendable practice of the grocery chains to buy at low prices in order to sell at low prices and thereby to attract as many patrons as possible to their stores; that the grocery chains at times find it advantageous to use the nationally known branded products of these defendants as "leaders"; that such leaders are extensively advertised and sold at bare cost or less, at prices calculated to attract a great many customers to their stores; that the grocery chains, selling leaders at bare cost or less, expect to recover such loss by selling other products, at a profit, to the same customers; that where the chains resort to practices of this sort, independent retailers object to the handling of defendants' products either on the ground that they cannot meet chain store competition on such products, or because of the impression created in the customer's mind that goods sold so cheaply must necessarily be inferior; that in this way chain groceries without intending to injure defendants, have nevertheless restricted defendants' market among independent retailers and have often forced defendants to move their perishable products at drastic price concessions; that without intending to do so, chain grocery stores when using defendants' products as leaders have thereby made it easier for themselves to buy additional quantities of nationally branded products from defendants at greatly reduced prices; that under the law, defendants cannot force chain stores to maintain fixed resale prices on their products; that the only redress which defendants have is through

modification of the Consent Decree so that they may be permitted to establish their own retail stores and provide a direct outlet for their branded products.

11. That where meat products are sold to chain stores they are usually sold in large quantities, and that the neces- [fol. 179] sity for supplying large orders to the central buyers of the several chain store systems works a special handicap on defendants on account of the peculiar nature of their product; that most of the products handled by defendants are highly perishable and must be transported and sold promptly for what the market affords; that when a chain buyer refuses to take his normal quantity, defendants are suddenly confronted with the task of finding a new outlet for their products before deterioration sets in, and such forced selling of perishable products in the open market is invariably attended by heavy losses; that to avoid taking such large losses these defendants are obliged when bargaining with chain store buyers to reduce their prices to the point where the chain business will be assured, which means either no profit at all, an exceedingly small profit, or a loss because the chain store buyer, like all other buyers, is interested in obtaining goods at the lowest price possible; and the great volume of his purchases gives him tremendous power over these defendants who have not the alternative of establishing their own retail stores and consequently must frequently sell at sacrifice prices in order to move their large stocks of highly perishable products and maintain their plants in operation; that the necessity of moving large stocks of perishable products without having assured outlets reduces the bargaining power of these defendants to a minimum and virtually leaves them at the mercy of the chain buyers; and that these defendants have been caused serious injuries thereby and such injuries will become greater unless the bargaining power of these defendants is increased by modification of this decree so that they can handle grocery products and establish retail stores.

12. That in order to avoid this unfavorable position as much as possible, and to find more dependable outlets for [fol. 180] perishable products, defendants have been obliged more and more since 1920 to seek out and cultivate small individual retailers of meat, greatly adding to the number of small orders and therefore to the distribution cost at

branch houses that the average weight sold per sales ticket at such branch houses has steadily declined from 119 pounds in 1923 to 110 pounds in 1927, 106 pounds in 1928 and 103 pounds in 1929; that synchronously with this decline, the average branch house expense per cwt. has increased from 90¢ in 1923 to $1.02 in 1927, $1.05 in 1928, and $1.06 in 1929; that the growth of 31 per cent in total number of orders since 1923, the decline of 13 per cent in the average weight per order and the increase of 17 per cent in the branch house expense has been the direct result of the increasing number of meat departments in chain stores and the defensive measures defendants have been obliged to take; that retail chain store development in recent years, though praiseworthy from the point of view of its effect upon costs of distribution, has, by reason of this decree, worked to the positive injury of the business of these defendants and that the continuation of this trend in chain store development which forces defendants to operate their distributive facilities at higher and higher cost will only aggravate the injury which the business of these defendants has already suffered.

III. As to the Grocery Chains in Meat Packing and Other Manufacturing

1. That these defendants are in the business of manufacturing and dealing in meats and meat products and livestock products and butter, cheese, eggs and poultry; that prior to 1920, the grocery chains had not entered those fields or businesses to any appreciable extent; that since 1920, the grocery chains have entered those fields, are ex- [fol. 181] panding therein, evidencing a strong trend toward performing both the manufacturing and wholesaling functions in those products, at least to the extent of their own requirements; that Kroger Grocery and Baking Company now owns and operates 2 meat packing plants, 5 sausage making plants and 4 dairies; that the Great Atlantic & Pacific Tea Company owns and operates 5 refrigerated meat warehouses and plans to build 4 more, 1 meat cutting plant, 2 cheese factories and 1 creamery; that Safeway Stores in California buys its meat on the hoof; that some of the other grocery chains are performing the manufacturing and wholesaling functions with respect to meats, poultry, butter, eggs and cheese, at least to the extent of a por-

tion of their requirements; that the trend toward the absorption of the manufacturing and wholesaling functions by grocery chains with respect to their requirements of packing house products and poultry, butter, eggs and cheese leaves these defendants uncertain as to retail outlets for the output of their plants and, if continued, will operate to the serious disadvantage and injury of these defendants and will continue to so operate as long as these defendants are prohibited by this decree from retailing; and that the unfairness of this decree is apparent from the fact that the grocery chains are entering the meat packing and produce business while these defendants are prohibited from entering the grocery business or even selling their own products (meats and produce) at retail.

2. That some of the principal chains have established their own agencies in the country districts for the purchase of butter and eggs; that these agencies buy in the same manner and in competition with these defendants; that the entry of such chains into the business of performing the collecting and wholesaling functions in butter and eggs for their stores (which function was formerly performed by [fol. 182] these defendants and other wholesalers) has injured these defendants in that it decreases the volume of business of these defendants in butter and eggs and leaves a surplus of collecting and wholesaling facilities on their hands with resulting difficulties of operation and losses and a reduced number of available retail outlets; that in that manner these chains are completely integrating as to their requirements of butter and eggs while these defendants cannot integrate because forbidden by this decree to establish retail stores; that the chains are also integrating in the cheese business; that the disadvantages of a concern not integrated in competing with a completely integrated concern are well known; that the trend of grocery chains is toward further integration; that these defendants are being seriously injured by it because of the unfair prohibitions of this decree against the establishment of retail stores by these defendants.

3. That the grocery chains are entering various other manufacturing fields such as operating canneries and bottling works, roasting coffee, operating milk condenseries, manufacturing salad dressing, candies, spices, teas, extracts, etc.; that the Great Atlantic & Pacific Tea Company oper-

ates 11 factories for miscellaneous grocery processing, 30 bakeries, 2 cheese factories, the world's largest milk condensary, one canning and preserving plant and 1 creamery; that the Kroger Grocery and Baking Company operates at least 10 bread and cake bakeries, 2 meat packing plants, 5 sausage factories, 4 coffee roasting plants and 1 general manufacturing plant; that American Stores Company operates 8 bakeries, 8 warehouses, 1 large milk plant and manufactures preserves, mayonnaise, extracts, ketsup; that it roasts coffee, cans fruit and vegetables; that Safeway Stores, Inc., operates 16 bakeries, 1 candy factory and 39 [fol. 183] warehouses; and that chain stores in fields other than foods are manufacturing a number of their requirements of certain products and evidencing a strong trend toward expansion in that direction; and that such trend has become general as is elsewhere herein described.

4. That the absorption of the manufacturing and wholesaling functions by chain stores within the last decade has in certain instances caused great loss and serious embarrassment to some manufacturers and forced others to establish their own retail outlets; that a considerable number of the grocery chains bake their requirements of bread and other bakery goods; and their entry into the bakery field drove some baking companies to making house to house canvasses to sell the output of their factories and others to the establishment of their own retail outlets; that the retail shoe chains forced some shoe manufacturers to establish their retail outlets; that the entry of the grocery chains into the business of retailing meats has already injured these defendants; that if the grocery chains continue their expansion into the field of manufacturing and wholesaling meats and produce as is now indicated, these defendants will be seriously embarrassed and damaged in the conduct of their businesses but will be unable to save themselves as the baking companies and shoe manufacturing companies did because of the prohibitions of this decree against selling meats at retail.

IV. As to Non-defendant Meat Packers in Chain Grocery Stores

1. That certain meat packer competitors who are not subject to this decree are now selling meats at retail and

expanding in the field of retail meat distribution which they were doing only to a negligible extent in 1920; that one of [fol. 184] the most notable examples of this trend is Adolph Gobel, Inc., a large non-defendant meat packer, processor and sausage maker, who operates ten plants and has recently acquired several meat packing concerns, including Jacob E. Decker & Sons, a large non-defendant meat packing company at Mason City, Iowa; that said Adolph Gobel, Inc., controls and operates 19 retail stores; that Hygrade Food Products Corporation organized in 1927 acquired the meat packing plants of the Allied Packers, Inc., eight in number, and other meat processing plants, and already controls and operates 22 retail food stores; that said Hygrade Food Products Corporation by common stock ownership is also affiliated with other retail stores such as United Cigar Stores, Happiness Candy Stores, Neve Drug Stores, and Whelan Drug Stores, and has established food and refreshment stands to serve automobile service stations of Beacon Oil, Inc.; that the Frye Packing Company of Seattle, Washington, has a chain of 50 retail stores in Seattle, and is planning to expand that chain in Portland and other cities; that certain New Orleans meat packing companies either have obtained or are obtaining control of a chain of 27 retail meat markets in that city; that other non-defendant meat packers, processors and slaughterers are also selling meats at retail; that this trend toward retailing meats by the non-defendant meat packer competitors of these defendants operates to the damage and injury of these defendants in the conduct of their business and seriously endangers their future existence and welfare unless their right to also sell meats at retail is restored to them by modification of this decree.

2. That there is a distinct possibility that more of the large non-defendant meat packers will merge with grocery chains; that two instances of such mergers have already [fol. 185] occurred, namely, that of Adolph Gobel with Jacob E. Decker & Sons of Mason City, Iowa, and that of Hygrade Food Products Corporation with Allied Packers, Inc., elsewhere herein referred to; that such mergers of non-defendant packer competitors of these defendants with grocery chains will seriously injure the business of these defendants unless this decree is modified so that these defendants can establish retail outlets; and that this decree

is unfair and unjust to these defendants in that it prohibits them from establishing retail outlets while permitting their competitors to establish such retail outlets and merge with retail outlets already established.

3. That many of the non-defendant meat packer competitors of these defendants have their own branch houses and operate their own refrigerator cars; that they are free to utilize these facilities for handling and distributing articles of commerce which these defendants are prohibited from handling by this decree; that Morrell & Co., one of the largest non-defendant packers deals in and handles a highly diversified line of groceries and other food products; that Kingan & Company, a large and well-established packer, is dealing in fish; that Jacob E. Decker & Sons, another large and well-established packer, now owned by Adolph Gobel, Inc., deals, among other things, in oysters and poultry food; that many other non-defendant meat packer competitors of these defendants are likewise now dealing in such prohibited articles; that to exclude these defendants from these fields while their meat packer competitors who are not subject to this decree are permitted to deal in them, is, in view of changed conditions, unjust and unfair, substantially lessens competition, and is against the public interest.

[fol. 186] V. As to Wholesale Grocers

1. That there are approximately 6000 wholesale grocers located in approximately 2300 cities throughout the United States doing an annual business of several billions of dollars; that many of said wholesale grocers are of great financial strength, strongly entrenched in the trade, and doing profitable businesses of national scope; that the size, geographical distribution and nature of the wholesale grocery business is such that it cannot be monopolized by any one concern or small number of concerns, and that these defendants if permitted to engage in selling groceries at wholesale would not and could not, even though they desired to do so (which they do not), monopolize the wholesale grocery business of the United States, or restrain trade or commerce therein, and could not constitute any danger or threat of monopoly or restraint of trade either now or in the future.

2. That since the entry of this decree a large number of the wholesale grocers of the United States have combined in the form of voluntary chains or associations; that the Independent Grocers Alliance is a combination of 58 wholesalers so organized, operating a retail chain of over 9000 stores and doing a business estimated to be approximately $500,000,000 per year; that the Red & White Stores is a combination of 25 wholesale grocers operating over 4500 retail grocery stores in the United States; that the Nationwide Stores Company is a combination of 18 wholesale grocers operating about 2500 retail grocery stores; that Creasey Corporation, Inc., is a combination of 30 wholesale grocers operating approximately 9300 retail grocery stores in the United States; that the Clover Farm Stores is a combination of 21 wholesale grocers operating approximately 2000 retail grocery stores; that the United [fol. 187] Purity Stores is a combination of 6 wholesale grocers operating approximately 1200 retail grocery stores; that there are other voluntary chains of wholesale grocers of varying size and importance and of varying degrees of centralization of control; that the trend among such voluntary chains of wholesale grocers is toward a stronger and stronger centralization of control and eventually most, if not all, of them will be merged into single units; that these combinations of wholesale grocers constitute organizations of great financial strength, large sales and dominating positions in the business already established and controlled by them; and that these defendants if permitted to sell groceries at wholesale would not and could not monopolize the wholesale grocery business or constitute any danger or threat of monopoly, or restrain trade or commerce therein either now or in the future.

3. That in addition to the operation and control of chains of retail grocery stores by chains of wholesale grocers, many single wholesale grocers throughout the country operate and control by ownership or affiliation chains of retail grocery stores; that this movement toward combinations of wholesale grocers and the operation and control of chains of retail grocers by wholesale grocers and by combinations of wholesale grocers has occurred almost entirely since the entry of this decree; that the operation of chains of retail grocery stores by wholesale grocers is a shining example of the unfairness of this decree; that the

wholesale grocers are themselves taking an important part in the modern trend in merchandising of goods, namely, integration and diversification, and thereby greatly increasing its size and momentum; that many of them are saving their very lives by doing so; that these defendants are also wholesalers of food products, but are prohibited by this decree from integrating or diversifying; and that [fol. 188] although the wholesale grocers are establishing their own retail outlets handling meats and groceries to the disadvantage and injury of these defendants, they vigorously and selfishly oppose any modification of this decree to permit these defendants to do likewise; and further by excluding these defendants from the general field of food distribution, this decree creates a special privilege for wholesale grocers and grocery chains to the injury of these defendants and from an economic point of view violates the spirit of the anti-trust laws in that it substantially reduces competition and is therefore against the public interest.

4. These defendants aver upon information and belief that since the entry of this decree many wholesale grocers have begun to handle and are now handling packinghouse products; that packinghouse products are sold and handled in many of the stores of the retail chains of the wholesale grocers which have been acquired or organized since the entry of this decree; that the wholesale grocers are both wholesaling and retailing packinghouse products; that the wholesale grocers retail packinghouse products, but strongly oppose permission to these defendants to retail packinghouse products; that wholesale grocers deal in packinghouse products, but strongly oppose permission to these defendants to deal in grocery products; and that the unfairness and injustice of this decree to these defendants is thereby shown in that it creates a special privilege for said wholesale grocers by excluding competition from their field and is against the public interest as declared by the anti-trust laws.

5. That the modern trend in merchandising is toward diversification; that that trend has gained momentum of unexpected and unforeseeable proportions within the last [fol. 189] ten years; that it is becoming particularly important in the field of foods because of another trend hereinabove described toward the establishment of general re-

tail food stores; that in order to keep pace with the modern trend toward general retail food stores a food manufacturer and wholesaler must handle as many lines of commodities as can be handled efficiently and to advantage in order to give the maximum service at the minimum cost to the general food store and thereby to the consumer; that although canned goods and other groceries could be handled along with meats with efficiency and savings, these defendants are excluded by this decree from joining in the modern trend towards such diversification; and that this prohibition is greatly to the injury and damage of these defendants.

6. That these defendants have unused distribution and sales facilities which could be used in the distribution of grocery products if the restrictions of this decree with respect thereto were modified; that by so using such distribution and sales facilities the overhead in the conduct of the meat business of these defendants would be reduced and both meats and groceries could be distributed more efficiently and with considerable saving both to the public and to these defendants; that it is to the interest of the livestock producers and the meat industry of the country, and the consumers of meats, that these defendants be permitted to distribute groceries and that the exclusion of these defendants from the grocery business, while perhaps serving the selfish interest of the wholesale grocers, is seriously damaging to these defendants, to livestock producers and consumers, is unnecessary and unfair, substantially lessens competition, and is against the public interest.

7. That these defendants have no unfair advantage of any kind or description in transporting and distributing [fol. 190] grocery products; that in 1921 the Interstate Commerce Commission after full hearings in a case to which both the National Wholesale Grocers Association and the Southern Wholesale Grocers Association were parties, decided that these defendants have no unfair advantage over wholesale grocers in the field of railroad transportation by reason of their refrigerator cars (62 I. C. C. Reports 375); that these defendants now have no unfair advantage over wholesale grocers in the field of railroad transportation; that since the entry of this decree there has been a tremendous development of motor truck transporta-

tion in the United States; that the building of hard roads and the perfection of motor-driven vehicles in the last ten years have produced many radical changes in the field of transportation; that the wholesale grocery business is one peculiarly adapted to transportation by motor truck; that the wholesale grocers are using chiefly, and many of them practically altogether, motor truck transportation in delivering their products; that these defendants have no advantage in the field of motor truck transportation, and that this decree is totally unnecessary to protect wholesale grocers against such non-existent advantages in transportation.

8. That most, if not all, of the wholesale grocers of the United States merchandise grocery products under their own private labels and brands; that products so merchandised are not susceptible of monopolization because of the insistent demand on the part of consumers for particular branded products to which they have become accustomed; that the power of brands is usually so great in consumer's consciousness that a small price reduction on a less familiar brand does not readily cause the substitution of the less known for the better known brand; and that there is there-
[fol. 191] fore no possibility of monopolization of grocery products on the part of the defendants either now or in the future.

9. That in addition to the wholesale function in the field of food merchandising performed by the wholesale grocers, the retail chain stores, both regular and voluntary, also perform a wholesale function; that even if these defendants could obtain a monopoly of the wholesale grocery business (which is impossible), they could not continue such monopoly or make it effective because the consumer would always have the alternative of purchasing from the chains; that any contention that these defendants could obtain a monopoly of food distribution or constitute a threat of monopoly of such food distribution either now or in the future as against the great chain store organizations already in the field and the great wholesale grocery organizations and the large food manufacturing and distributing companies recently formed by mergers, or otherwise, and those theretofore existing, is absolutely unsound.

10. That any removal of the restrictions of the original decree in this case with respect to retail meat markets will be ineffective relief to these defendants unless corresponding modification of paragraphs 3, 4 and 5 of said decree with respect to grocery products and other commodities is also made for the reason that under present-day conditions of distribution of food commodities it is totally impracticable to establish and maintain retail markets selling meats alone, and that competitive conditions and the modern trend of merchandising are such that only combination food stores selling meats in combination with groceries could be established with any hope of success.

11. That any disadvantages or difficulties or loss of position in the trade suffered by the wholesale grocers of the [fol. 192] country are not and have not been caused by these defendants or by any of the activities of these defendants, and would not have been caused by these defendants even though their right to deal in articles prohibited by this decree had not been taken away by this decree; that said disadvantages and difficulties, if any, of said wholesale grocers have been due to changes in economic conditions and in methods of merchandising, namely, integration and diversification by grocery chains and companies created by mergers, such as General Foods, Standard Brands, etc., as elsewhere herein described; that said wholesale grocers are middlemen, and said process of integration eliminates or tends to eliminate middlemen; that proof of the statement that the disadvantages and the difficulties, if any, of the wholesale grocers have been due not to the defendant packers or any of their activities, but to the modern movement of integration, is conclusively found in the strong movement among wholesale grocers to do their own manufacturing, establish their own private brands and their own chains of retail stores; that by this means the wholesale grocers are joining in the modern movement of integration and adding greatly to it, and thereby saving themselves, but, nevertheless, they are unalterably opposed to permitting these defendants also to join in such modern movement for the purpose of saving their business from embarrassment, loss and possible failure; and that said decree is on that account unfair to these defendants, wrongfully excludes them from fields of business in which they could en-

gage with benefit to the public, is damaging to these defendants and is against the public interest.

[fol. 193] VI. As to How Other Food Manufacturers are Adjusting Their Businesses to the Radically Changed System of Distribution

1. That these defendants are not only forbidden by this decree to establish retail outlets for their own products, but they are also forbidden to diversify their line in accordance with modern trends in distribution methods; that since the entry of this decree other food manufacturers have so diversified in order to get the important advantage which handling a variety of branded products gives in bargaining with the chain grocery stores, to deliver these products at the retailer's door in peddler wagons, to increase and improve their service to the retail stores and lower their costs of distribution; that it is this necessity of strengthening bargaining power that has caused numerous food manufacturers to expand their business into diverse lines, or to merge into large organizations, handling grocery products that are totally unrelated to one another.

2. That examples of this trend are to be seen in such companies as General Foods Corporation, Standard Brands, Inc., The Gold Dust Corporation, The National Dairy Products Corporation, The Borden Company, Adolph Gobel, Inc., Hygrade Food Products, Kraft-Phenix Cheese Corporation, and National Brands, Inc., all formed or expanded since the entry of this decree.

3. That General Foods Corporation formed in 1929 and having total sales in 1929 of $128,036,792.00, produces and distributes the following products (practically all of which are branded, nationally advertised, and well-known) to chain grocery stores, independent grocers and wholesalers:

Postum Cereal
Instant Postum
Grape-Nuts
[fol. 194] Post Toasties
Post's Bran Flakes
Post's Whole Bran
Jell-O
Institution Jell-O
Genesee Plain Gelatin
Genesee Gelatin Dessert
Genesee Pudding Powder
Franklin Baker's Bulk Coconut
Coconut Oil

Copra Oil Cake
Cashew Nuts
Log Cabin Syrup
Wigwam Syrup
Maxwell House Coffee
Maxwell House Tea
Maxwell House Tea Balls
Calumet Baking Powder

D-Zerta
Ice Cream Powder
Swans Down Cake Flour
Instant Swans Down
Swans Down Graham Flour
Minute Tapioca
Minute Gelatin
Star Pearl Tapioca
Lightning Tapioca
Walter Baker's Premium No. 1 Chocolate
Walter Baker's Breakfast Cocoa
Walter Baker's Dot Sweet Chocolate
Walter Baker's Caracas Sweet Chocolate
Walter Baker's German's Sweet Chocolate
Walter Baker's Milk Chocolate Bar
Walter Baker's Milk Chocolate Almond Bar
Walter Baker's Chocolate Coatings and Liquors
Post's Bran Chocolate
Franklin Baker's Premium Shred Coconut
Franklin Baker's Brazil Packed Coconut
Franklin Baker's Milk Packed Coconut
Franklin Baker's Southern Style Coconut
Franklin Baker's Banner Coconut
Franklin Baker's Snow Drift Coconut
Certo
Pectin
Sanka Coffee (de-Caffeinated)
Hellmann's Mayonnaise
Hellmann's Olive Relish
Hellmann's Thousand Island Dressing
Hellmann's Russian Dressing
Hellmann's Sandwich Spread
Hellmann's Southern Relish
Hellmann's Tartar Sauce
Hellmann's Horse Radish
Hellmann's Beet Radish
LaFrance
Satina
Diamond Crystal Salt
Products of General Sea-foods Corporation—Fish and other Sea-foods;
Products of Batchelder, Snyder, Dorr & Doe Company—Meats, Fruits, Vegetables, Dairy Products, Preserves, and Condiments
Blue Point Oysters
Sealshipt Oysters
By-products of Corn and Wheat
Wheat Flour
Corn Flour
Corn Meal
Chops, Grits
Corn Oil
Cattle Feeds

[fol. 195] that in line with the modern trend in merchandising, late in 1929, said General Foods Corporation bought either control or a substantial interest in Batchelder & Snyder of Boston, Massachusetts, a company doing a large business in manufacturing and processing meats, distributing dairy, fruit and vegetables products and provisions in the New England States, New York and the Atlantic seaboard states and are now developing retail outlets; that this connection enables General Foods Corporation to sell meats in combination with its other numerous lines of commodities which these defendants are prohibited from doing by this decree; and that the disadvantage which these defendants are thus suffering by reason of this decree is serious.

4. That Standard Brands, Inc., which comprises Fleischmann Company, Royal Baking Powder, Widlar Food Products Company, E. W. Gillett Company, Ltd., and Chase & Sanborn, has made available to retail dealers the same cash store door service and quick delivery on Royal products, Chase & Sanborn coffee, etc., that has prevailed heretofore

on Fleishmann Yeast; that Fleischmann system alone includes about 2,000 small motor trucks which are capable of reaching 300,000 grocers daily, and all in all, Standard Brands, Inc., has a fleet of upwards of 4,000 trucks engaged in the direct selling of a wide variety of nationally advertised products; that other food manufacturers are developing along similar lines.

5. That because of the wide distribution which is obtained from handling a wide variety of products and from the use of the new methods of selling and delivery, these companies will be able to secure a substantially increased sales volume on all products distributed; that by bringing together under one management a large group [fol. 196] of diversified products, fewer salesmen are required to take orders from individual retailers; that one salesman can take orders for a wider variety of products where formerly it required several salesmen duplicating one another's territories to get the same orders; that the savings so effected in selling and delivery expense enable these companies to quote lower prices both to individual retailers and to retail chain buyers; that in addition their bargaining power with the chains is greatly strengthened owing to the number and importance of the branded goods they control and the lower prices they are able to quote; that the net result of such diversification of products and reduction in selling expenses is to bring about lower prices to consumers which is in the public interest.

6. That these defendants are prohibited by the decree from keeping in step with the new methods of distribution; that they are unable to use the established methods available to other food manufacturers to bargain advantageously with chain stores; that they are prohibited by the consent decree from diversifying their line of products as other food manufacturers are doing in order to make their salesmen more efficient order takers and to reduce their selling costs; that they are prohibited from making any contribution toward reducing the cost of distributing food products in line with the modern trend; and that this decree is therefore inequitable, substantially lessens competition and is against the public interest.

7. That 7 large food manufacturing and distributing companies which have been formed or vastly expanded since the entry of this decree, namely—General Foods Corporation, Gold Dust Corporation, National Dairy Products Corporation, The Borden Company, Beechnut Packing [fol. 197] Company, Schulte Retail Stores Corporation and Proctor & Gamble, in 1928 had average earnings of 9 per cent on sales as compared with 1.3 per cent for the four defendant packers; that said 7 food manufacturing and distributing companies earn on the average four times as much on net worth as said four defendant packers; that said 7 food manufacturing and distributing companies earn five times as much on the total assets as said four defendant packers.

8. That said 7 food manufacturing and distributing companies are in stronger financial positions than said four defendant packers, doing very large businesses on much more profitable bases than these defendants or any of said four defendant packers; that said 7 food manufacturing and distributing companies are competitors of these defendants who have the privilege and do handle articles which these defendants are prohibited by the Consent Decree from handling; that these defendants if permitted to engage in business in the articles prohibited by this decree will be on a parity instead of at a disadvantage in competition with said 7 food manufacturing and distributing companies, and others of like character, such as California Packing Corporation, Hygrade Food Products Corporation, Adolph Gobel, Inc., Standard Brands, Inc., etc., and in addition thereto will be in competition with the retail grocery chains and the wholesale grocery chains and the retail chains of the wholesale grocers and the voluntary chains and the countless independent wholesalers and retailers; that these defendants could not possibly constitute any danger of monopoly or domination in the distribution of foods or of such prohibited articles or restrain trade with respect thereto, and that this decree is unnecessary, substantially lessens competition, and is against the public interest.

[fol. 198] VII. As to Certain Economic Effects of the Consent Decree

1. That in view of the revolutionary changes which have taken place in distribution methods since 1920 the Consent

Degree is inequitable in that it forbids the defendants to engage in retail trade and does not at the same time forbid large chain store systems from engaging in meat packing; it forbids defendants to engage in retail trade and does not at the same time forbid large non-defendant packers to engage in retail meat trade, either by the acquisition of retail stores or by merger with chain store companies; it forbids defendants to protect their position by diversifying the products handled as other large food producers are doing; finally, it forbids defendants to safeguard their position through integration as the wholesale grocers are doing.

2. That the Consent Degree is detrimental to the public because it unreasonably restrains and substantially lessens competition in the distribution of foods and puts an unsurmountable barrier in the way of defendants, preventing them from making any contribution toward further lowering the cost of distributing foods and makes for high cost rather than low cost distribution.

3. That in view of the changes which have taken place, the Consent Degree is injurious to these defendants because it adversely affects the volume of their sales and profits in all sections where a large proportion of the retail meat trade is in the hands of chain stores; it has forced defendants as a matter of self protection to concentrate on developing small order business with individual retail stores, and this has materially increased branch house expense since 1923; it stultifies every attempt on the part of defendants to improve and cheapen their methods of distributing meats; it places defendants in position where, on [fol. 199] account of the perishability of their products, they are at all times subject to heavy losses growing out of forced sales in the open market when chain stores fail to renew large orders; they are subject at all times to the loss of business growing out of the entry of chain stores into meat packing on a large scale; they have already felt the loss of business in communities where chain stores have established their own meat packing and sausage plants; they are at all times subject to the loss of business growing out of the entry of large nondefendant packers into the retail business on a large scale; and they have already suffered a loss of business in those sections where such packers have entered the retail trade.

4. That in view of the fundamental changes that have taken place in distribution and the present trend toward more and more integration, the Consent Degree clearly contains power to destroy these defendants, which power has already begun to operate adversely on them, a power that was never contemplated by any of the consenting parties at the time the decree was entered.

VIII. As to Interest of Farmers and Livestock Producers

1. That the Farmers and Livestock Producers of the United States are a very large and important part of the public; that agriculture is the primary and fundamental industry of the nation; that the wholesale grocers are a small and relatively unimportant part of the public performing the function of middleman which is rapidly becoming uneconomical and obsolete, as compared with the Farmers and Livestock Producers who are the source of the nation's food supply; that the prosperity of the Farmers and Livestock Producers is a matter of great [fol. 200] concern to the entire public; that the gravity of the agricultural situation is evidenced by the several farm relief measures which have been adopted by the National Government in the last ten years, and the vast interest which the highest officials of the nation have manifested in it.

2. That approximately two-thirds of the human population of the United States lives east of the Mississippi River, while approximately two-thirds of the livestock population is produced west of the Mississippi River; that there must be large packers having wide distributing facilities in order to transport meat from the producing sections in the west where there is a surplus to the large consuming sections in the east where there is a deficit; that large packers by means of branch houses and car routes reaching all sections of the country provide a nationwide outlet for the farmers' livestock; that under these conditions the entire nation is the market for the livestock produced in any section of the country; that every livestock producer is thereby freed from the effects of having to depend upon a narrow, local, capricious outlet for his products; that in view of the wide outlet afforded by large packers for the orderly distribution of the farmers' livestock products, anything tending

to undermine the financial strength and competitive ability of large packers must react unfavorably upon the prices received by producers for their livestock; that it is directly to the interest of livestock producers to have the fullest use of those marketing facilities which will be made available only when large packers are not crippled by the artificial and unreasonable restrictions of this decree.

3. That the Farmers and Livestock Producers of the nation are enthusiastically and strongly in favor of modi- [fol. 201] fication of this decree as a measure which will enure to their benefit, and thereby to the public interest; that the Farmers and Livestock Producers are deeply interested in broadening and improving distribution facilities and merchandising methods for their products, which is in the public interest; that 35 livestock producers and farmers associations are urging modification of this decree and have evidenced their position in this respect by passing resolutions, including such organizations as the American Farm Bureau Federation, the American National Livestock Association and the National Wool Growers Association; that the names of the organizations and the number of resolutions passed by each are as follows:

Name of association	No. of resolutions
American Farm Bureau Federation	1
American Farm Congress	1
American National Livestock Association	3
Arizona Cattle Growers Association	2
Arizona Wool Growers Association	1
California Cattlemen's Association	2
California Wool Growers Association	2
Colorado-Nebraska Lamb Feeders' Association	1
Colorado Stock Growers Association	2
Idaho Wool Growers Association	2
Idaho Horse and Cattle Raisers' Association	2
Interstate Live Stock Producers Association	1
Kansas Livestock Association	2
Missouri Livestock Association	2
Montana Stockgrowers' Association	1
Montana Wool Growers Association	2
National Wool Growers Association	1
Nebraska Stockgrowers Association	2
Nevada Land and Livestock Association	1

Name of association	No. of resolutions
Nevada State Farm Bureau	1
New Mexico Cattle Growers' Association	1
Ohio Farm Bureau Federation	1
Ohio Livestock Co-Operative Association	1
[fol. 202] Oregon Horse and Cattle Raisers' Association	2
Oregon Wool Growers' Association	2
Sheep and Goat Raisers' Association of Texas	1
Southern Livestock Association	1
Texas and Southwestern Cattle Raisers Association	2
Utah Horse and Cattle Growers' Association	1
Utah Wool Growers Association	2
Washington Wool Growers Association	2
Western Cattle Marketing Association	1
Western South Dakota Stockgrowers Association	1
Wyoming Stockgrowers Association	2
Wyoming Wool Growers Association	1
	53

that it is in the interest of the Farmers and Livestock Producers of the nation, and therefore in the public interest, that this decree be modified as hereinafter prayed.

4. That in 1929 at the request of the Attorney General, the Secretary of Agriculture of the United States held hearings on the subject of the modification of this decree; that dozens of witnesses consisting of officials of farm organizations and livestock associations, and representatives of the farming population of the United States in general, appeared at this hearing and urged modification of this decree as a measure for their welfare and the welfare of the public; that the evidence in favor of modification was overwhelming and almost without dissent, and that public opinion in general is also overwhelmingly in favor of modification.

IX. As to Fresh Milk and Cream and Feeds

1. That these defendants are and have been large purchasers of milk and cream and manufacturers of butter and cheese, and dealers in those products, and it has been [fol. 203] their practice, as well as the practice of other manufacturers, to buy their supplies of milk and cream

for the manufacture of butter and cheese in farming communities which are not readily accessible to the city markets using fresh milk and cream; that the cities of this country have been growing in size and their demands for fresh milk and cream have been rapidly increasing; that methods of transporting fresh milk and cream have improved so that since 1920 city dealers have been enabled to draw supplies from more and more remote sections of the country; that the result is that they have been drawing upon some of the territories in which these defendants have heretofore purchased milk and cream for the manufacture of butter and cheese; that the prices for fresh milk and cream for city distribution are invariably higher than those for the manufracture of butter and cheese, and such high priced milk and cream cannot be manufactured into butter and cheese except at a loss; that on account of the prohibitions of this decree, these defendants have been forced where city dealers enter territories in which these defendants purchase milk and cream, either to quit the territory or to do business in such territory at a loss; that the competitors of these defendants in these territories have been meeting this situation by purchasing milk and cream and selling the same in fresh condition wherever the demand and the condition of the market makes that course advisable or profitable; that these defendants have suffered loss and damage on account of these developments which have occurred since the entry of this decree; that this decree prohibits these defendants from competing on a basis of equality with competitor butter and cheese manufacturers, and that it is unfair and oppressive.

2. That the above described invasion of the territories where milk and cream were and are being purchased ex- [fol. 204] clusively for the manufacture of butter and cheese will grow and increase in the future and that these defendants will suffer further loss and damage unless the prohibitions of this decree with respect to fresh milk and cream are modified.

3. That these defendants have been further damaged by the prohibitions of this decree against dealing in fresh milk and cream by reason of the fact that usually farmers who have poultry and eggs to sell, also have fresh milk and cream to sell, and prefer to sell to dealers or manufacturers

who will purchase all four commodities which these defendants are prohibited by this decree from doing.

4. That these defendants are prohibited by this Decree from dealing in many poultry and animal feeds; that since the entry of this Decree it has become the practice of the competitors of these defendants in the purchase of poultry, butter and eggs, to carry stocks of poultry and animal feeds at their buying stations; that the carrying of such stocks of poultry and animal feeds is a convenience to the farmer because it enables him to purchase such feeds at the time and place of selling his produce; that on this account many farmers have shown a considerable preference for dealing with produce buying stations carrying poultry and animal feeds which has caused these defendants the loss of a substantial volume of produce which they otherwise would have purchased and by reason of which these defendants have suffered loss and damage to their business.

5. That these defendants have extensive facilities throughout the entire country for purchasing, transporting and selling perishable commodities of the above mentioned character and have had long experience in business of that [fol. 205] character; that it would be materially to the advantage of both the farmer and the consumer if these defendants could deal in fresh milk and cream; that the removal of the prohibition against doing so would furnish a broader and more highly competitive market for farmers' poultry, eggs, milk and cream, and assure them of the most efficient transportation and distribution; that it is inconsistent with the purpose of this decree to prejudice and damage these defendants in the conduct of their businesses not prohibited by this decree; and that this decree is unnecessary and oppressive to these defendants, detrimental to farmers and consumers, and against the public interest.

X. As to Stockyards

1. That as to the public stockyards market companies owned and operated by these defendants (hereinafter referred to as "packer owned stockyards"), they show unto the Court that the facilities and service furnished by such stockyards to producers, shippers, commission men, buyers and all others doing business in them are as good and effi-

cient as the facilities and service furnished at non-packer owned stockyards; that the prices of livestock marketed in said packer owned stockyards are as good as those in non-packer owned stockyards; that packer ownership of said stockyards has no effect upon the prices of livestock sold in such yards; that the competition among defendant packers and against all other buyers in said packer owned stockyards is full, free and vigorous—as it is in non-packer owned stockyards; that commission men doing business at packer owned stockyards are not discriminated against as to office space or location of pens; that non-defendant packers are not discriminated against or prejudiced in any way at packer owned stockyards; that buyers of livestock [fol. 206] other than defendant packers are not discriminated against or prejudiced in any way at packer owned stockyards; that shippers and sellers of livestock in packer owned stockyards are not discriminated against or prejudiced in any way; that these defendants own stockyards principally at places where they have packing houses and it is to the advantage of these defendants to maintain efficient service and good markets at such yards in order that the supply of livestock for their packing plants may be adequate; that there is no discrimination of any character against stockyard banks and cattle loan companies at said packer owned yards; and that there is no discrimination of any kind against any one doing business at such packer owned yards.

2. That shortly after the entry of the decree in this case, the Hon. George Sutherland and the Hon. Henry W. Anderson, were appointed trustees by this Court of the stock of the Swift and Armour interests in stockyards; that thereafter said trustees, accompanied by a representative of the United States Department of Justice, held hearings at six of the principal packer owned stockyards of the country for the purpose of ascertaining conditions at such yards, particularly as to whether they were being legally conducted; that such hearings were exhaustive and needless to say impartial, were held at the stockyards where it would be most convenient for those interested in the operation of said yards and those having any kind of a complaint to appear and testify; that they were held after notice both posted at the yards and published by the press inviting those interested to appear and testify; that Federal offi-

cials, state officials, livestock association officials, livestock exchange officials, livestock market newspaper publishers, bankers, producers and many others appeared and testified, [fol. 207] making a voluminous record; that after said hearings were completed, said trustees reported to this Court that they found no violation of law by the stockyards companies or these defendants in their operation of said stockyards or in any other manner; that said trustees further reported that they neither met nor found any complaint on the part of anyone about the conduct and operation of said stockyards or the packer ownership thereof, except as to the prices of feed which were based on the outside market prices for feedstuffs and are now subject to regulation by the Secretary of Agriculture under authority of the "Packer and Stockyards Act, 1921" (42 St. L. 159); that said Trustees' report and transcript of record of the hearings by said trustees upon which said reports are based, were filed with this Court and are a part of the record in this case; that the pertinent excerpts from said reports are for the convenience of the Court, marked Exhibit "A," attached hereto and hereby made a part hereof as effectively as if written herein; and that said investigation and report by said trustees shows that the prohibitions of this decree against ownership of stockyards by these defendants is unnecessary and that these defendants by reason of their ownership of such stockyards do not have any illegal advantage in any way and do not and cannot use said stockyards as a means of restraining trade or commerce, either in the purchase of livestock or the manufacture and sale of meats and livestock products and that there is no danger that monopoly or restraint of trade will result from such ownership in the future.

3. That since the entry of the decree in this case, the "Packers and Stockyards Act, 1921" has been passed by the Congress of the United States and is now law; that said "Packers and Stockyards Act, 1921" has been held constitutional by the Supreme Court in the case of Stafford v. Wallace, 258 U. S. 495; that said "Packers and Stock- [fol. 208] yards Act, 1921" requires every stockyard within its jurisdiction to (a) register with the Secretary of Agriculture, (b) furnish reasonable stockyards services without discrimination, (c) make all rates and charges for stockyards services just, reasonable and non-discrimi-

natory, (d) file printed schedules of all rates and charges with the Secretary of Agriculture and keep such schedule open to public inspection, (e) give ten days' notice of any change in rates or charges, and (f) refrain from any unfair, unjustly discriminatory or deceptive practice or device; that said Act empowers the Secretary of Agriculture to (a) prescribe the form and manner of preparing and arranging the posting of schedules of rates and charges for stockyards services, (b) hold hearing with respect to any new rate, charge, regulation or practice, and render a decision with respect to the lawfulness thereof, (c) determine and prescribe just, reasonable, non-discriminatory rates and charges and prohibit any other, (d) hear complaints alleging unfair practices or devices and issue cease and desist orders with respect thereto, and (e) apply to United States District Court for the enforcement of any order made; that said "Packers and Stockyards Act, 1921" fully and completely regulates and controls said stockyards; that said Secretary of Agriculture is empowered to and does regulate, control and supervise said stockyards, minutely and in detail; that anyone having a grievance as to the conduct of said stockyards can seek and obtain a hearing of his complaint before the Secretary and secure relief if his complaint is well founded; that the regulation by the Secretary under said Act is complete, adequate, equitable and effective; that said Act is a change in statutory law of the United States which has been made since the entry of this decree and which renders this decree inappropriate, unnecessary, and unjust in the radically changed conditions now existing.

[fol. 209] XI. As to Stockyards Terminal Railroads

1. That Paragraph two of said Decree also enjoins these defendants from owning Stockyards Terminal Railroads; that said Stockyards Terminal Railroads are a necessary adjunct to the operation of stockyards, and the allegations herein contained with respect to stockyards, wherever applicable, are hereby incorporated with respect to Stockyards Terminal Railroads; that in addition, said Stockyards Terminal Railroads are regulated and controlled with respect to their rates and charges and otherwise by the Interstate Commerce Commission thoroughly and completely

and in the same manner and to the same extent as other railroads of the United States; that the trustees' reports filed in this cause on April 8, 1922, and March 21, 1923, as aforesaid, show that these defendants were not guilty of any illegal or unfair practices in the operation of said Stockyards Terminal Railroads; that these defendants are not now and have not been, either since or before said trustees' reports, guilty of any unfair practices or illegal acts with respect to the operation of said Stockyards Terminal Railroads; that these defendants further allege that said trustees' reports show no reason for divestment of the ownership of said Stockyards Terminal Railroads from these defendants as provided for by the injunction of the original decree in this cause, and that, moreover, there is no reason for such divestment, but on the contrary, it is in the interest of the public and of orderly and efficient marketing of livestock at said stockyards that these defendants be permitted to own and operate said Stockyards Terminal Railroads; that these defendants further show unto the Court that the regulation and control of said Stockyards Terminal Railroads by the Interstate Commerce Commis- [fol. 210] sion affords all the protection and guaranty against illegal or unfair practices which the public requires or needs; and that the injunction with respect to ownership of Stockyards Terminal Railroads in unnecessary and against the public interest.

XII. As to Changes in Statutory Law—"Packers and Stockyards Act, 1921"

1. That the "Packers and Stockyards Act, 1921" is a change in statutory law of the United States which has occurred since the entry of this decree; that said Packers and Stockyards Act provides for rigid regulation and control of the meat packing industry and public stockyards market companies; that in addition to the power and authority of the Secretary of Agriculture with respect to stockyards hereinabove outlined, said Act makes it unlawful for any packer to—

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or

locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respeect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, [fol. 211] any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

that said act prohibts practices and establishes regulations and controls over meat packers and stockyards not theretofore authorized by the law; and that said act provides complete, equitable and effective regulation of both meat packers and stockyards and renders this decree totally unnecessary.

XIII. As to New Interpretation of the Anti-trust Laws—Steel Case

1. That the basis of the injunctions of this decree is not that these defendants have or had a monopoly but that the

potential power of these defendants constituted a menace to acquire a monopoly of the food distribution of the nation; that it was the mistaken opinion of the Attorney General at the time of the entry of this decree that power was unlaw- [fol. 212] ful, regardless of its purpose; that after the entry of this decree, namely on March 1, 1920, the Supreme Court of the United States handed down its decision in the Steel Case; that the Attorney General made an identical contention in that case; that the Supreme Court emphatically overruled that contention and decided that unexerted power is not unlawful; that a portion of the language of the court in that case reads as follows:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law; or, as the Government says, 'the combination embodied in the corporation unduly restrains competition by its *necessary effect* (the italics are the emphasis of the Government), and therefore is unlawful regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led? Competition consists of business activities and ability, they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts, we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly.

We have pointed out that there are several of the Government's contentions which are difficult to represent or measure; and the one we are now considering, that is, the power is 'unlawful regard. ss of purpose,' is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme, but short of it

[fol. 213] the Government cannot stop. The fallacy it conveys is manifest."

(U. S. v. U. S. Steel Corporation, 251 U. S. 417, 450-451.)

that the ruling by the Supreme Court of the United States in the Steel case is an interpretation of the Anti-Trust Laws of the United States made after the entry of this decree, and not theretofore given; that that changed or new interpretation of the Anti-Trust Laws makes modification of this decree necessary in order to make it consistent with said Anti-Trust Laws as thus interpreted.

XIV. As to the Relative Position of Swift and Company in the Meat-packing Industry

1. That of the total number of cattle slaughtered in the United States in 1929 these defendants (Swift and Company and its subsidiaries) handled approximately 17.37 per cent; of calves, 17.47 per cent; of sheep and lambs, 28.60 per cent; of hogs, 12.71 per cent; and of all livestock 16.10 per cent; that of the total quantity of butter produced in the United States in 1929, these defendants handled approximately 8.04 per cent; of eggs, 5.75 per cent; of poultry, 5.84 per cent; of cheese, 20.97 per cent; and of butter, eggs, poultry and cheese combined 7.12 per cent; that of the total quantity of oleomargarine produced in the United States in 1929, these defendants handled approximately 17.50 per cent; that of the total quantity of lard substitutes produced in the United States in 1929 these defendants handled approximately 24.69 per cent; that of the total quantity of hides produced in the United States in 1929 these defendants handled approximately 17.37 per cent; that the volume of businesses thus handled by these defendants in live stock and the above named products and com-

[fol. 214] modities is too small to constitute a monopoly or a threat or danger of monopoly or even suggest a monopoly; that these defendants act individually and severally and independently of others in the conduct and operation of their business; and that said volume of business is too small to enable these defendants to dominate the meat packing business of the United States or control or manipulate the prices of live stock or packinghouse products or re-

strain trade or suppress competition therein or to constitute any danger of such domination, control, manipulation or restraint in the future.

2. That in every market where these defendants buy live stock they buy in competition with all other packers, large and small, and all other buyers; and that in every market where they sell meat they are in keen competition with all large packers, and with all small packers and slaughterers who convert locally grown live stock into meat for local consumption.

3. That the invested capital of these defendants, percentage of profit or investment, and profit per dollar of sales per year from 1920 to 1929 inclusive were as follows:

	Invested capital	% of profit on invested capital	Profit per dollar of sales
1920	$231,552,000	2.2	.0047
1921	211,740,000	3.7 (loss)	.0098 (loss)
1922	212,789,000	6.1	.0201
1923	213,974,000	6.2	.0176
1924	216,100,000	6.5	.0182
1925	219,479,000	7.0	.0176
1926	223,124,000	7.0	.0165
1927	223,327,000	5.4	.0132
1928	226,140,000	6.5	.0153
1929	227,217,000	5.8	.0126

[fol. 215] that said invested capital is quite small when compared with that of many companies of today such as United States Steel Corporation, General Motors Corporation, many oil and copper companies and numerous others; that said invested capital and such modest profits are too small to constitute a monopoly or a threat or danger of monopoly or an indication of a monopoly; and that said profits are to small to suggest that these defendants dominate, control, manipulate prices, restrain trade or suppress competition in any way in any of the businesses in which they are engaged, but on the contrary these defendants conduct their businesses in full and vigorous competition with all others engaged in such businesses.

4. That there are approximately 1,245 non-defendant meat packers (meat packers who are not subject to this

decree) in the United States, and in addition thereto, thousands of local slaughterers all of whom in 1929 slaughtered approximately 58.76 per cent of the cattle slaughtered in the United States, 67.31 per cent of the calves, 46.43 per cent of the sheep and lambs, 70 per cent of the hogs, and 64.87 per cent of all live stock; that a great number of said non-defendant packers have large businesses, have doubled and trebled their volumes of business in the last 10 years, are financially exceptionally strong, well established in the trade, make 2 or 3 times as much profit per dollars of sales as these defendants and are strong and aggressive competitors of these defendants; that said non-defendant meat packers have a decided advantage over these defendants in that the business of said non-defendant meat packers is largely local in character and more adjustable to quick changes in market conditions; they can avoid markets when glutted or unfavorable, can cut down their operations when markets are depressed and increase when profitable, while [fol. 216] the nature of the service performed by these defendants and the facilities such service requires do not permit them to do any of these things, but, on the contrary, these defendants must buy live stock on all principal markets each day whether the price is favorable or not and must sell meats in all the principal markets of the country each day whether profitable or not; and that these defendants do not and cannot monopolize or dominate the meat packing industry or control or manipulate prices of any of the products of the same or restrain trade or commerce therein or constitute a danger or threat in that direction either now or in the future.

5. That these defendants are in full and free competition with all other defendant packers and all non-defendant packers and slaughterers both in the purchase of live stock and in the sale of meat and meat products; that these defendants are in full and free competition in all other lines of business in which they are engaged with all others so engaged; that these defendants have no monopoly in any of said businesses and do not and cannot constitute any threat or danger of monopoly; that they are not restraining trade or suppressing competition; and that there is no threat or danger that they will create a monopoly or re-

strain trade or suppress competition in any of said lines of business in the future.

6. That the profits of these defendants per dollar of sales per year from 1922 to 1929, inclusive, have ranged downward as follows:

[fol. 217]

Year	Profit per dollar of sales
1922	.0201
1923	.0176
1924	.0182
1925	.0175
1926	.0165
1927	.0132
1928	.0153
1929	.0126

that the average profit per dollar of sales made by these defendants from 1906 to 1913, inclusive, was 2.70 per cent, while from 1922 to 1929, inclusive, it declined to 1.61 per cent; that a comparison of the average profits per dollar of sales for the above-named period since the entry of this decree with such average profits for the pre-war period prior to its entry, shows that these defendants have rapidly lost ground in that respect since the entry of this decree; that a comparison of such average profit for the period since the entry of the decree with leading non-defendant meat packer competitors such as George A. Hormel & Co., who made an average profit of 3.27 per cent per dollar of sales from 1926 (the first year for which figures are available) to 1929, inclusive, while the average profit of these defendants for the same period was 1.44 per cent per dollar of sales, shows that these defendants are not growing as other well managed concerns in the industry are growing, but, on the contrary, are declining; that a further comparison of such average profit figure with available figures for large companies manufacturing and distributing groceries and other non-meat foods such as General Foods Corporation, which made an average profit of 17.31 per cent per dollar of sales from 1922 (the year of organization) to 1928, inclusive, shows that the exclusion of these [fol. 218] defendants from the field of non-meat food manufacturing and distributing is greatly to the injury of these

defendants; that the rate of profit since the entry of this decree is inadequate to keep the business of these defendants in a healthy condition, and will not attract the necessary capital for these defendants to conduct their business in the most efficient manner and render the maximum service to producers of live stock and consumers of meat; that the serious decline in profits since the entry of this decree, as shown above, has been caused by this decree because these defendants have been prohibited thereby from adjusting their business to the modern economic movements and changes in merchandising methods, such as integration, diversification, etc., as hereinabove described; and that the result of being enjoined from participating in these modern movements in industry on equality with their competitors and other citizens is vitally injuring these defendants and is a serious detriment to the public.

XV. In General

1. That except in instances where it is stated otherwise, the facts and averments hereinabove stated in this petition represent present-day economic conditions, merchandising methods, Statute Law of the United States, and interpretations thereof and changes in the same which have occurred since the entry of the original decree in this cause; that on account of such present-day and changed conditions these defendants do not and cannot monopolize the meat packing industry, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future; that these defendants are operating and conducting their business individually and severally and independently of others in [fol. 219] every particular and not in combination, agreement or conspiracy in restraint of trade or commerce or in any attempt to create a monopoly; that if the restrictions of this decree are removed as hereinafter prayed these defendants cannot and will not monopolize the meat packing business, nor the wholesale grocery business, nor the chain store business, nor any other line of business, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future; that said decree has, on account of the conditions heretofore related, become unjust, unfair, inequita-

ble and oppressive to these defendants, and it is unnecessary, substantially lessens competition, and is against the public interest; and that on account of the facts and conditions hereinabove alleged, this decree should be modified as hereinafter prayed.

2. That, while perhaps not computable in dollars and cents or with mathematical exactness, the injuries which these defendants are suffering on account of this decree are substantial and serious and directly traceable to this decree; that modern business executives are sensitive to trends in economic developments and must foresee the results of such trends and adjust their businesses accordingly; that businesses not so conducted will suffer irreparable damage and eventually perish; that the hands of these defendants are so tied by this decree that they cannot adjust their businesses to modern economic trends and changed conditions; that their situation requires relief; and that relief should be given now before the injuries are beyond repair.

3. That these defendants adopt the allegations of the "Amended Petition of Armour & Company and others for the construction, modification and amendment of the Decree of February 27, 1920" filed in this cause in so far as the same are pertinent and applicable to the case of these [fol. 220] defendants and hereby make said pertinent and applicable allegations of said Armour petition a part here the same as if written herein.

XVI. Prayer

1. Wherefore, these defendants pray that the Court will modify its said decree, entered under date of February 27, 1920, so that the parties defendant will be enabled, under such terms and conditions as the Court shall direct, (a) to own capital stock or other interests in public stockyards' market companies or stockyard terminal railroads; (b) to use or permit others to use their distributive systems and facilities; (c) to manufacture, sell or deal in commodities specified in paragraphs fourth and fifth of said decree; (d) to own and operate retail meat markets; (e) to own capital stock or other interests in public cold storage warehouses; (f) to engage in the fresh milk and cream business; and that these defendants be granted such

other and further relief as the nature of the case may require and the Court may deem just and proper in the premises.

2. And, as in duty bound, the petitioners will ever pray, etc.

Charles A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, Attorneys for Petitioners.

[fol. 221] *Duly sworn to by W. B. Traynor. Jurat omitted in printing.*

[fol. 222] EXHIBIT "A" TO AMENDED PETITION

Excerpts from Report of April 8, 1922, on Stockyards by George Sutherland and Henry W. Anderson, Trustees, Appointed by This Court in This Case

"After due consideration and a study of such portions of the record in the above entitled cause at law upon the performance of their duties as Trustees under said plan, they determined that it would be wise for them to visit personally a number of the stockyards the stock of which was deposited under said plan and to familiarize themselves by personal investigation of the conditions surrounding said yards and the operation thereof and to secure by interview with persons conducting business in said stockyards such information as would enable them to discharge intelligently the duties imposed.

* * * * * * *

"As a result of these conferences, arrangements were perfected for your trustees, accompanied by Mr. Galloway (of the Department of Justice) and a competent stenographer, to visit the more important stockyards, inspect the same personally, and hold hearings at which it was proposed to secure information from various interests concerned as to the methods of operation prevailing at said yards, and the general conditions surrounding the same. Arrangements were also made to give notice at each of the points at which said stockyards proposed to be visited were located, of the proposed visits of your trustees and the pur-

[fol. 223] poses thereof, by notices posted at the stock-

yards and published in the local press, and by such notices to invite all persons interested in the stockyards, or doing business therein, or in any manner interested in any question affecting the duties of your trustees under said plan, as well as the leading citizens of said districts, to meet with your trustees at said stockyards and give the many information which would enable them intelligently to discharge the duties imposed upon them by said decree.

• • • • • • •

"Your trustees have not visited personally the remaining yards mentioned in said plan, as these yards are all comparatively small, and the amounts of stocks held by the Swift and Armour groups of defendants therein not large. Your trustees have, however, inquired into the methods of operation prevailing at the yards not visited, and have obtained written reports as to a number of said yards covering substantially the grounds covered by the hearings at the yards visited, and they are informed that the conditions and methods of operation prevailing at these smaller yards not visited or inspected, are substantially the same as those prevailing at the yards which your trustees visited as aforesaid. Your trustees have not, therefore, deemed it necessary to make a personal visit to these yards.

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"(2) Assignment of Space in the Yards

"Your trustees made special inquiry into the methods followed in assigning pens or space to the various commission men, traders and speculators who operated in the yards. This inquiry was especially directed to the question as to whether there was any discrimination in this regard.

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[fol. 224] "While each of the commission men, traders and speculators naturally desired to secure the best locations possible in the yard, we found no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justice to all concerned,

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"(3) Weighing

"Your trustees were unable to find any ground for complaint as to the conduct of the weighing operation, and there was no suggestion that it was not fairly and justly done.

"(4) Charges and Revenues

"Your trustees found no objection to or criticism of the stockyard charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, traders and speculators, it is necessary in order to provide adequate revenue that the stockyard companies should charge a profit upon the feed used for cattle while on the yards, and this charge as well as the yardage charge, is of course charged back against the producer or shipper of the cattle. Since the farmers who are also stock raisers produced and sell the feed, the difference in the price realized by them for their feed on the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. This might possibly be relieved to some extent by making a rental charge for the pens and reducing to a corresponding degree the profit on feed, but the result to the shipper of cattle would be the same, and this would necessarily involve a complete readjustment of present [fol. 225] charges which have grown up as a result of experience, and with which the public are familiar. With the exception of some complaints as to the feed charges and, in a few instances, as to the character of the feed furnished, which latter complaints the witnesses testified were always adjusted by the stockyard companies upon proper showing, your trustees found no serious objections as to the present charges of the stockyard companies. Since the enactment by Congress of the 'Packer and Stockyards Control Act of 1921' these matters of detail administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just ground be shown therefor.

"(4) Rendering Plants

"At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other commercial products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this Court. The evidence showed that in no instance was the rendering plant controlled by the stockyard company, and in fact your trustees found no instance in which the stockyard company had any interest in the company operating the rendering plant. Your trustees found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give to the stockyard company some responsible agency to which it could look for the prompt removal of [fol. 226] dead animals, which was essential to the sanitary condition of the yards. The reasons given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stockyard companies and the rendering plants which they deemed a violation of the Anti-Trust Laws of the United States or of the decree of this Court.

. . . . . .

"(5) Stockyard Bank

"There is maintained and operated at the administration or exchange building at each of the stockyards visited and, as your trustees are advised, at the other company yards also, a stockyard bank. This institution leases its quarters in the administration building from the stockyards company, but in no instance did the testimony show that the stockyards company was in any wise interested in the stock of the bank, or had any control over the operation thereof.

"This bank is conducted by a separate corporation in each case for the convenience of stock raisers, commission men, traders and others doing business upon the yards, and for making loans upon cattle. Your trustees could find

nothing in the relation between these banks and the stockyard companies in violation of the Anti-Trust Laws of the United States or of the decree in this cause.

* * * * * * *

"(6) Stockyard Newspaper

"At each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulating generally in the territory served by these yards. This newspaper in each in-[fol. 227] stance is conducted in the administration or exchange building owned by the stockyards company, leasing its offices and quarters therein from the stockyard company. While it appeared that in some instances in the past the stockyards company had been interested in the newspaper, the testimony was that such interest where it had existed had now been disposed of, and these newspapers are now owned by individuals or separate companies not connected with the stockyards companies in any way, and the stockyards companies have no interest therein. The testimony was that the stockyard companies did not in any — control or influence the policy or operation of these papers. In a number of instances the owners or managers of these papers testified at the hearings.

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"(7) The Packing Plants

"Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some instances these packing plants are located upon land owned by the stockyard company. These packing houses constitute the principal buyers for cattle upon the local yards.

"While the larger packing companies maintain packing houses at nearly all of these yards, and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyard companies against such independent plants, either in leasing land upon which to locate said plants, or in any other man-

[fol. 228] ner. The testimony both of the officers of the stockyard companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed, and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards, with a view to the development of their markets and resulting increase in their business.

* * * * * * * * *

"(8) Ownership of Stock by Large Packers and Effect on Competition Among Buyers on the Yards

"Your trustees directed an inquiry at each place to the question of the effect, if any, of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market, and especially upon competition between buyers upon the yards, with a view to carrying out the instruction of the decree to ascertain if there was in the management of the stockyard companies any violation of the Anti-Trust Laws of the United States or of the decree of this Court.

"The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers and other persons examined by your trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards, or the price of cattle sold thereon; that the sole function of the stockyards was to provide a market place for the cattle, and to take care of them while they were on the market until they were delivered to the purchaser; that the buyers, consisting of the representatives of packing houses, independent traders and speculators, were in no way under the control of the stockyard companies, except that they were all required to conform to the police regula-[fol. 229] tions for the conduct of the yards, and to conduct their business in accordance with the proper standards of business ethics or integrity. In some instances, the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers, because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competi-

tion in buying upon the yards, not only as between buyers for the packers, but between buyers for the packers and traders and speculators, and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyard companies had no bearing upon the question of competition between the buyers, and did not result in any discrimination by the companies in favor of the packers. There were witnesses who expressed the opinion that it was contrary to the interests of the cattle trade, and especially the cattle growers, to have the stockyards controlled by the packers, their view being that they should either be controlled by the Government or independent owners, but the large preponderance of the evidence was to the effect that the control of the stockyards by the large packers who were interested in maintaining a good market place which would attract shipments to these markets, and who were also interested in the efficient management of the yards and the proper handling of the cattle which they were to purchase and slaughter, was in the interest of the market and of the cattle trade generally.

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"The evidence of those opposed to the ownership of stock in the stockyards by the packers as a matter of policy failed, however, to disclose any facts showing that the [fol. 230] ownership of such stock was used to give to the packers any advantages as buyers upon said yards, and the overwhelming evidence of all classes of witnesses who appeared before your trustees was to the contrary.

* * * * * * *

"(9) The Management of the Yards

"Your trustees directed their inquiries especially to the management of the yards, with a view to ascertaining if there was any violation of the Anti-Trust Laws of the United States or of said decree which would require them to vote the stock for change of management.

"Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their views as to the policy of the

ownership of stock in the yards by the packers, that the present management of the yards visited was excellent, and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed, and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted had been remedied when brought to the attention of the stockyard company. Even those persons who were strongly opposed on principle to the ownership of stock in the stockyards companies by the packers, admitted that the management was good, and could suggest no improvement therein. After most careful investigation, your trustees were unable to discover anything in the present management of these yards which was in violation of the Anti-Trust Laws of the United States or of the decree of this Court in this cause.

* * * * * * *

[fol. 231] "Conclusion

"Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said — being used in violation of the Anti-Trust Laws of the United States or of the decree of this Court entered in this cause."

Said trustees further reported as follows:

"Voting the Stock under the Plan

* * * * * * *

"As already stated, your trustees directed their investigations largely to the question of whether the stockyards or stockyard terminal railroads, or any of them, were being used in violation of the Anti-Trust Laws of the United States or of the decree of this Court in this cause, to the end that they might exercise the voting power vested in them of the stocks of the Swift and Armour groups of defendants in pursuance of the terms of said decree. Your

trustees have not been able to find or to obtain any testimony to the effect that the stockyards or stockyard terminal railroads are being used in violation of the Anti-Trust Laws of the United States or of said decree, and have therefore, under the terms of the said plan, exercised said voting power for the continuance of the management as it existed when said plan was approved by this Court."

After the resignation of the Honorable George Sutherland as trustee on account of his appointment as Justice [fol. 232] of the Supreme Court of the United States, the Honorable Henry W. Anderson under decree of this Court continued to act alone as trustee. The Honorable Henry W. Anderson held further hearings in 1923 and thereafter under date of March 21, 1923, reported to this Court on the operation and conduct of said stockyards as follows:

"In pursuance of said instructions, your trustee has endeavored to keep informed to the best of his ability as to the conduct of the business and affairs of said stockyard companies and stockyard terminal railroads during the past year, and has voted the stock of said stockyard companies deposited under said plan for the continuance of the existing management, with such changes in personnel as might be requested by the owners and depositors of said stock, since he has found nothing in said management which in his opinion was in violation of the Anti-Trust Laws of the United States or the decree of the Court in this cause."

* * * * * * *

"Conduct and Operation of the Stockyards and Stockyard Terminal Railroads

"Your trustee feel constrained to observe, however, that it was a source of gratification to find that the relations between the management of the stockyards companies and the public was so satisfactory as evidenced by the testimony of the various persons representing different branches of the industry who were examined, and it was their universal opinion that the management was good, that the business received prompt and efficient attention, and that such minor complaints as related to the price of feed, or the service rendered, which would be inevitable in a business of this kind, received the prompt attention of

[fol. 233] the management, and the objectionable conditions, if they were found to exist, were remedied.

* * * * * * *

"As to Sale of Stock Held by Swift and Armour Groups of Defendants in said Stockyard Companies in Accordance with said Plan

"Your trustees also inquired carefully into the existing sentiment in the various communities served by said stockyards with respect to requiring the sale of said stocks and the separation of the packers from any ownership of stock in said yards, or from the management of said yards. This inquiry was made with special care at Fort Worth, in which territory the sentiment in favor of the segregation of the stockyards from packer ownership was said to have been largely developed, and at Omaha where there was also some sentiment on the subject. The testimony of various witnesses representing various branches of the industry was to the effect that any sentiment which had heretofore existed for the segregation of the stockyards from packer interest or control had largely died out, and that this result had been further contributed to by the enactment and operation of the Packers and Stockyards Control Act. The only witness among the many examined who still felt that the packers should be required to sell their stock in the stockyards and the management be entirely divorced from packer interest was Mr. E. L. Burke, whose evidence will be found in the record, p. 239. He felt that the present management was good, bnt that as a matter of principle, the ownership of stock in the stockyards by the packers was bad. The Court is referred to his testimony for his views on the subject.

[fol. 234] "The evidence was universal to the effect that the stockyards company had nothing to do with the sale or handling of live stock on the yards, except to provide the facilities and service, and your trustee was unable to develop any evidence of the slightest discrimination on the part of the stockyards companies as between packers and other buyers. The testimony was also general that there was full and free competition in the purchase of live stock upon the yards at all points visited."

[fol. 235] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AMENDED PETITION OF THE DEFENDANTS ARMOUR AND COMPANY AND OTHERS FOR THE CONSTRUCTION, MODIFICATION, AND AMENDMENT OF THE DECREE OF FEBRUARY 27, 1920—Filed April 2, 1930

The defendant Armour and Company, a corporation organized and existing under the laws of the State of Illinois; the defendants hereinafter named all of which are corporations organized and existing under the laws of the states indicated: Armour & Company, New Jersey; Armour & Company, Kentucky; Armour & Company (Ltd.), Louisiana; The Anglo American Provision Company, Illinois; Fowler Packing Company, Maine; Hammond Packing Company, Illinois; The New York Butchers Dressed Meat Company, New York; Atlantic Hotel Supply Company, Inc., New York; and the individual defendants, A. Watson Armour, Laurance H. Armour, Arthur Meeker, F. Edson White, George M. Willetts, and Frederick W. Croll, all of whom are hereinafter referred to as petitioners, present this, their amended petition for the construction, modification and amendment of the decree entered in the above en-[fol. 236] titled cause on February 27, 1920, commonly known as "Packers Consent Decree", and your petitioners respectfully allege and represent to the court the following:

(1) That the above entitled cause is a suit in equity which was instituted by means of a petition filed by the United States of America as sole plaintiff against Swift & Company, an Illinois corporation, Armour and Company, an Illinois corporation, Morris & Company, a Maine corporation, Wilson & Co., (Inc.) a New York corporation, and Cudahy Packing Company, a Maine corporation, and against certain corporations affiliated with or subsidiary to said defendants, and also against certain individuals who were officers of said corporations.

(2) That said petition in equity filed by the United States of America charged, among other things, that the defendants had acquired an unlawful monopoly in the purchase of live stock and in the sale of meats, and alleged

that the general equity powers of the court and its authority under the Sherman Anti Trust act and the Clayton act were invoked for the purpose of putting an end to said monopoly and to deprive the defendants of certain instrumentalities and facilities and to compel the defendants to desist from dealing in certain substitute foods and unrelated lines; that said petition further charged that the defendants had acquired a controlling interest in twenty-two of fifty stock yards located in the United States and of certain facilities such as terminal railways, banks, cattle loan companies, rendering plants and market papers pertaining thereto, for the purpose of furthering such unlawful monopoly; that the defendants had eliminated competition in the sale of meats and had acquired control of certain substitute foods, and that such control of substitute foods was being rapidly extended and new fields invaded, and that

"unless prevented by a decree of this court, the de-
[fol. 237] fendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

(3) That the five primary defendants filed joint and several answers to said petition, on behalf of themselves and their various affiliated and subsidiary corporations and their officers, and specifically denied each and every charge of illegality of action or intent made by said petition; that on February 27, 1920, A. Mitchell Palmer, then the Attorney General of the United States, and the attorneys of record representing the defendants hereto, entered into a stipulation that the decree known as Packers Consent Decree be entered by the court without any findings of fact; that said stipulation provided in part:

"The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States."

(4) That on February 27, 1920, the court entered a decree pursuant to said stipulation between the Attorney General of the United States and the attorneys for the defendants; that the court incorporated in said decree of February 27, 1920, the above quoted conditions and restrictions contained in said stipulation; that said decree does not contain any findings of fact but enjoins and restrains the defendants from

(1) Entering into any agreements in restraint of interstate trade or commerce and from monopolizing or attempting to monopolize said trade or commerce;

(2) Owning any capital stock or other interest in any [fol. 238] public stock yard market company, or any stock yard terminal railroad, or stock yard market newspaper or journal;

(3) Using or permitting anyone to use the defendants' distributing systems and facilities, including branch houses, route cars or auto trucks, for the handling or distribution of any of the articles or commodities described in said decree;

(4) Manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in, either for domestic or export trade, fish, vegetables, fruits, confectionery, soft drinks, molasses, jellies, preserves, spices, coffee, tea, chocolate, cocoa, nuts, (except peanuts) flour, sugar, rice, bread, cereals, grain, grape juice and various miscellaneous articles other than food, all of which are hereinafter referred to as unrelated lines;

(5) Owning by individual defendants 50 per cent or more of the voting stock of any corporation engaged in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of said unrelated lines, except cereals, grain, and said miscellaneous articles other than foods;

(6) Owning, operating, or conducting retail meat markets in the United States;

(7) Owning any capital stock or other interest in public cold storage warehouses in the United States;

(8) Buying, collecting, selling, transporting, distributing, or otherwise dealing in fresh milk and cream, and from owning any capital stock or other interest in any corporation or firm engaged in said business;

(9) Using any illegal trade practice in relation to the conduct of the defendants' business.

That said decree of February 27, 1920, contains mandatory provisions directing the defendants to dispose of their shares of stock in public stock yard companies, terminal railroads, market newspapers, public cold storage warehouses, and also directing the defendants to dispose of any [fol. 239] retail meat markets conducted by them and any commodities known as unrelated lines, and their interest, so far as provided by said decree, in any corporations dealing in such articles; that said decree further provides that—

"The jurisdiction of this cause be, and is hereby retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree, and *for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.*"

(5) That the policy and purpose of the Sherman Anti-Trust Act is to prevent monopolies and combinations, agreements or conspiracies in restraint of interstate trade or commerce; that said decree of February 27, 1920 has had the effect and unless construed, modified and amended as hereinafter requested will have the future effect of substantially reducing interstate commerce and competition in the sale of said commodities known and designated as unrelated lines and in the intrastate business of selling meats at retail; that said decree of February 27, 1920, was entered by this Court upon the motion and at the request of the United States and would have been violative of said Sherman Act and therefore unlawful, if the same had been entered in a suit between private parties; that said decree contains no findings of fact and is principally injunctive and preventive in character and is based upon the supposition that the defendants to this proceeding have a monop-

oly in the buying of live stock and in the sale of meats and meat food products and have it within their power to extend such monopoly to the commodities designated as unrelated lines and will so extend the same unless restrained and prevented from dealing in such unrelated commodities by the decree of this Court.

[fol. 240] (6) That during the period of ten years which has elapsed since the entry of said decree of February 27, 1920, certain events have transpired and certain changes and additions have been made in the statute law of the United States and in the judicial interpretation thereof, and during said time conditions and marketing methods which formerly obtained in the live stock industry, the packing industry and in the production, manufacture, sale and distribution of meats and meat food products and of said unrelated lines, have undergone radical and material changes; that such subsequent events and changes in and additions to law and changes in conditions and marketing methods, establish that the suppositions upon which said decree was entered on February 27, 1920 are not true at the present time and that keen and active and extensive competition now exists in the purchase of live stock and in the sale of meats and meat food products and that a monopoly therein by these petitioners or by the defendants herein does not exist and cannot possibly be acquired or maintained by said defendants or by any of them; that such events and changes subsequent to the decree of February 27, 1920 further establish that if the restrictions of said decree which prevent the defendants to this proceeding from dealing in said commodities known as unrelated lines or in meats at retail are removed, it will not be possible for them to acquire a monopoly in any of said commodities known as unrelated lines or in the sale of meats at retail; that the entry of said defendants into such business will increase competition therein and have a tendency to prevent a dominant control therein by others; that such subsequent events and changes further establish that the decree of February 27, 1920 has served its purpose and is [fol. 241] no longer necessary for the maintenance of competitive conditions and the prevention of monopoly in the manufacture, sale and distribution of the products mentioned in said decree and under present conditions is detrimental to the public interest; that the application to your

petitioners of certain parts of said decree herein referred to is inequitable, serves no purpose recognized in law, imposes upon your petitioners an undue hardship not warranted by existing facts and conditions and is also prejudicial to the producers of live stock and to the consuming public and to public interests in general; that the foregoing allegations contained in this 6th paragraph of this amended petition are supported by said events and changes which occurred subsequent to the entry of said decree of February 27, 1920, and by present-day conditions prevailing in the live stock, packing and food industries in the United States as hereinafter stated:

The Decision of the Supreme Court in the Case of United States v. United States Steel Corporation (251 U. S. 417)

(7) That the decree of February 27, 1920 is not confined to restraints against unlawful acts which might be committed by the defendants in the manufacture and distribution of said unrelated lines, but prohibits the defendants from engaging in such business at all; that the theory of the injunction thus preventing private corporations from engaging in a private and lawful business was that the potential power of the defendants was a menace and that the defendants would acquire a monopoly unless enjoined from engaging in said business, thus disclosing that the then Attorney General of the United States was of the opinion when said decree was entered on February 27, 1920, [fol. 242] that the power to acquire a monopoly was unlawful under the Sherman Act, though the power had not been exercised; that on March 1, 1920, after the entry of said decree entered herein, the Supreme Court of the United States refused to dissolve the United States Steel Corporation, though it controlled approximately 45 per cent of the entire steel business of the United States; that in said anti-trust proceeding against the United States Steel Corporation the same Attorney General who procured the entry of the decree of February 27, 1920, advanced the same theory of law as was invoked by him in obtaining the decree of February 27, 1920; that the Court refused to sustain such contention and said in its opinion delivered on March 1, 1920:

"An industrial combination, short of a monopoly, is not objectionable under the Act merely because of its size—its

capital and power of production—or merely because of a power to restrain competition, if not exerted * * * We have seen that the judges of the District Court unanimously concurred in the view that the corporation did not achieve monopoly and such is our deduction and it is against monopoly that the statute is directed, not against an expectation of it, but against its realization and it is certain that it was not realized. The opposing conditions were underestimated. The power attained was much greater than that possessed by any one competitor—it was not greater than that possessed by all of them. Monopoly, therefore, was not achieved * * * The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an obhorrence to the law, or as the Government says, 'the combination embodied in the Corporation unduly restrains competition by its *necessary effect*, (the italics are the emphasis of the Government) and therefore is unlawful, regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led? [fol. 243] Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts, we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly. * * * The Corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. But we must adhere to the law and the law does not make mere size an offense or the existence of unexerted power an offense. It, we repeat, requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible."

(8) That the above and foregoing decision of the Supreme Court was the first judicial interpretation of the Sherman Act by the Supreme Court in which it was held that the mere power of a corporation to achieve a monopoly was not a violation of the Sherman Act, but that the actual present existence of a monopoly was required to justify the application of the penalties provided for in the statute; that said decision of the Supreme Court was also the first judicial interpretation of the Sherman Act by that Court to the effect that a control of 45 per cent of a particular industry did not constitute a monopoly; that at the time of the entry of said decree of February 27, 1920, the defendants to this proceeding controlled substantially less than 45 per cent of the purchase of live stock and the sale of meat and meat food products in the United States; that the primary defendants to this proceeding are active competitors and that [fol. 244] your petitioners are not parties to any contracts or combinations or conspiracies in restraint of trade or commerce, but that if the business of defendants to this proceeding were consolidated, their combined business would not constitute a measure of control equal to that approved by the decision of the Supreme Court in the anti-trust proceeding against the United States Steel Corporation; that during the year 1929 the combined slaughter of live stock by all of the defendants to this proceeding constituted but 36 2/10 per cent of the total live stock slaughtered in the United States.

The Packers and Stockyards Act, 1921

(9) That on August 15, 1921, subsequent to the entry of said decree of February 27, 1920, the Congress of the United States enacted the statute commonly referred to as "Packers and Stockyards Act, 1921"; that the purpose of said Act and its scope are shown by the interpretation placed upon it in the debates in Congress prior to its passage; that Representative Haugen who was the head of the Conference Committee having the bill in charge said in Congress six days before the bill was passed:

"It gives the Secretary of Agriculture complete visitorial, inquisitorial, supervisory and regulatory power over the packers and stockyards. It extends over every ramification of the packers and stockyards transactions in con-

nection with the packing business. It provides for ample court review. The bill is designated to supervise and regulate and thus safeguard the public and all elements of the packing industry, from the producer to the consumer, without injury or to destroy any unit in it. It is the most far-reaching measure and extends further than any previous law into the regulation of private business—with few exceptions, the war emergency measure and possibly the Interstate Commerce act."*

[fol. 245] (10) That said Packers and Stockyards Act, 1921, provides that it shall be unlawful for any packer to

"(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business

* Congressional Record, Vol. 61, Part 5, page 4783.

in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

(11) That said Packers and Stockyards Act, 1921, also provides for the regulation of stockyards and stockyard [fol. 246] dealers by the Secretary of Agriculture and requires every person engaged in buying or selling live stock or furnishing stockyard services at any stock yard within the jurisdiction of the Act, to register with the Secretary of Agriculture and to furnish reasonable bond to the Secretary of Agriculture conditioned upon the performance of his obligations; that said statute requires every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services and provides that all rates or charges made for any stockyard service by a stockyard owner or market agency shall be just, reasonable and nondiscriminatory; that said statute requires that printed schedules showing rates and charges for stockyard services be filed with the Secretary of Agriculture and kept open for public inspection at the stockyards; that no change be made in such rates and charges so filed and published except after ten days' notice to the Secretary of Agriculture and to the public and that if any such change is songht to be made, the Secretary of Agriculture may conduct a hearing with reference thereto and render a decision with respect to the lawfulness thereof, and said act empowers the Secretary of Agriculture to determine and prescribe just, reasonable and non-discriminatory rates and charges and to prohibit any other charges and to hear complaints regarding unfair practices or devices and to issue cease and desist orders with respect thereto; that said statute prescribes penalties in the form of fines and imprisonment for violations of the statute and authorizes the Secretary of Agriculture to apply to the United States District Court for the enforcement of any order made by him.

(12) That said Packers and Stockyards Act, 1921, was held to be constitutional by the Supreme Court in the case

[fol. 247] of Stafford v. Wallace, 258 U. S. 495; that in that case counsel for the United States stated the purpose of the Packers and Stockyards Act, 1921 in the following language:

"That Act is a combination of the principles embraced within both the act to regulate commerce as amended and the Sherman Anti-Trust Act. By a single statute, Congress embraced both the transportation of live stock and the commercial transactions therein in interstate commerce, including the meat-packing industries—in all their multitudinous aspects." (258 U. S. 508.)

That the broad scope of said Packers and Stockyards Act, 1921, and the complete regulation of packers and stockyards provided for is further disclosed by the opinion of the Court in Stafford v. Wallace, supra, wherein the Court said at page 513:

"The Packers and Stockyards Act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon and to order the packers to cease any forbidden practice."

The Decision of the Supreme Court in Wolf Packing Company v. Court of Industrial Relations of the State of Kansas, 262 U. S. 522

(13) That in 1923 the State of Kansas adopted a statute providing that the manufacture and preparation of food was a business affected with a public interest and conferring upon a court of industrial relations power to hear and determine disputes concerning wages and terms of employment in packing plants.

[fol. 248] The Attorney General of the State of Kansas, in urging the constitutionality of the statute before the Supreme Court of the United States, advanced the argument—

"Many millions of our people are wholly dependent upon the continuous and efficient operation of the packing

industry for their daily ration of meat. Millions of live stock growers are dependent upon the continuous and efficient operation of the same industry for a market for their live stock. All this has impressed with a public interest the packing industry."

In holding said statute unconstitutional, the Supreme Court in an opinion rendered June 11, 1923 said:

"There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply in Kansas are country-wide, a short supply is not likely, and the danger from local monopolistic control less than ever." (p. 538.)

Losses Sustained by the Defendants Subsequent to the Entry of the Decree of February 27, 1920

(14) That during the fiscal year 1921 subsequent to the entry of the decree of February 27, 1920, the defendants to this proceeding sustained losses in the operation of their business amounting to $61,001,265.89, which losses were distributed among the defendants herein as follows:

Armour and Company	$31,709,817.52
Swift & Company	7,812,291.77
Morris & Company	11,447,540.77
Wilson & Co. (Inc.)	8,462,052.77
Cudahy Packing Company	1,569,563.06

That at the time of the refinancing of Armour and Company in 1922 and the organization of Armour and Company of Delaware, as hereinafter set forth, Armour and [fol. 249] Company changed its fiscal year to end December 31 in lieu of its prior fiscal year ending the last Saturday in October; that during the fourteen months' period ending December 31, 1922, Armour and Company sustained operating losses amounting to $7,628,636.77; that in 1922 Armour and Company also deducted from its surplus an additional sum of $20,640,522.45, representing losses on foreign exchange and other items arising from war business applicable to prior years' operations but not theretofore de-

termined; that Armour and Company paid its preferred stock dividends from surplus for the years 1921 and 1922, and was unable to pay any dividends on its common stock in 1921, 1922, 1923, 1924, 1927, 1928 or 1929.

The Insolvency and Receivership of Wilson & Co. (Inc.) in 1924

(15) That Wilson & Co. (Inc.), a New York corporation, was one of the primary defendants herein and was charged by the petition with having acquired with the other defendants herein a monopoly in the purchase of live stock and in the sale of meats and meat products and with having the power of extending said monopoly to the commodities known as unrelated lines; that in the year 1924 while Wilson & Co. (Inc.) was negotiating an extension or renewal of its matured and maturing bank loans, certain creditors brought suits against Wilson & Co. (Inc.) and other creditors threatened to bring suits and to attach its properties; that on August 26, 1924, a creditor of Wilson & Co. (Inc.) filed a bill of complaint against it in the District Court of the United States for the Southern District of New York, praying for the appointment of a receiver to take charge of and conduct its business; that on August 26, 1924, Wilson & Co. (Inc.) filed its answer in said suit admitting the allegations of the bill of [fol. 250] complaint and joining in the prayer for the appointment of a receiver, and on August 26, 1924, said District Court entered an order appointing receivers to take charge of the properties and operate the business of Wilson & Co. (Inc.); that thereafter ancillary receivers of Wilson & Co. (Inc.) were appointed by the District Court in various districts where properties of Wilson & Co. (Inc.) were located and such receivers did, after the dates of their respective appointments, take charge of, manage and operate the properties and business of said Wilson & Co. (Inc.); that on August 27, 1924, creditors of Wilson & Co. (Inc.) filed a petition in bankruptcy against it in the District Court of the United States for the Southern District of New York.

The Armour-Morris Purchase and the Anti-trust Proceeding under the Packers and Stock Yards Act, 1921

(16) That on March 28, 1923, Armour and Company acquired by purchase the physical properties and business

of Morris & Company, and Morris & Company thereupon changed its name to American Food Products Company, reduced its capital stock to $1,000,000, discontinued the packing business, and became and continuously since has been, a liquidating corporation; that on February 17, 1923, before the final acquisition of the Morris & Company business and properties by Armour and Company, but after the execution of a preliminary purchase agreement with reference thereto, the Secretary of Agriculture of the United States filed a notice and complaint under the Packers and Stock Yards Act, 1921, against Armour and Company of Illinois, Armour and Company of Delaware (hereinafter referred to), J. Ogden Armour and Morris & Company; that this notice and complaint charged that the [fol. 251] purchase of Morris & Company by Armour and Company would have the tendency or effect of restraining interstate commerce and of creating a monopoly in the purchase of live stock, and in the shipment and sale of meat and other live stock products, and required the respondents to appear and show cause why a cease and desist order should not be entered by the Secretary of Agriculture; that the respondents filed answers to this notice and complaint, and hearings were held by the Secretary of Agriculture at various cities of the United States, commencing on April 30, 1923, and terminating on October 31, 1924; that more than 300 witnesses testified in said proceeding, and that the record now on file with the Secretary of Agriculture consists of more than 13,000 pages of testimony and exhibits; that on September 14, 1925, the Hon. William M. Jardine, then Secretary of Agriculture of the United States, rendered his decision and dismissed the proceeding because the charges made by the notice and complaint were not sustained by the evidence.

(17) That during the war period the government of the United States stimulated the production of live stock in order to meet national emergencies, and after the declaration of war by the United States, on April 6, 1917, virtually assumed control of the business of the large packers; that the government urged said defendants herein to run their plants to capacity, to enlarge their plants, and to sacrifice commercial requirements in order to provide the meats required to supply the abnormal export demands occasioned by the war; that this abnormal export de-

mand commenced in the year 1914 and continued long after the termination of the war on November 11, 1918; that Armour and Company expended the sum of $61,051,971.99 in enlarging and improving its packing plants and in build-
[fol. 252] ing new plants during a period of eight fiscal years ended December 30, 1922; that the period of financial and business depression following the war was particularly severe in the packing industry, and that the marked decrease of exports, the withdrawal of government demands, the cancellation of government orders, the sale of large quantities of government supplies on the markets at reduced prices, and other factors, occasioned an abrupt and severe decrease in the business of the defendants; that the volume of business of Armour and Company was reduced from $1,037,845,250 in 1919 to $547,560,375 in 1922; that the plant improvements and additions made by Armour and Company during the war period were of a substantial and permanent character, so that the capacity of the Armour and Company plants could not be reduced to a basis commensurate with its decreased volume of business; that the Armour and Company packing plants were operated at less than 50 per cent average capacity during the years 1921 and 1922, and as a result of this lack of volume Armour and Company sustained operating losses of $31,709,817.52 during the year 1921; that this great lack of volume existing in Armour and Company plants in 1921 and 1922 could not have been supplied through any ordinary solicitation of business; that the only solution was to increase the volume of business, and the only way in which volume could have been increased to the extent required was by the purchase of the business of a competitor; that for these reasons the purchase of Morris & Company was an industrial and economic necessity to Armour and Company; that on September 14, 1925, the Secretary of Agriculture rendered a report in said anti-trust proceeding and among other things, found as a fact—

"The Armour respondents allege in their answer that the capacity of Armour and Company as a result of war expansion was greatly in excess of normal requirements
[fol. 253] and that a large increase in sales was necessary to enable a normal capacity plant operation in order to prevent continued operating losses. This allegation is sus-

tained by the evidence, and the evidence further shows that economies in operation have been effected thereby and an increased volume of sales secured."

(18) That during the course of said hearing before the Secretary of Agriculture it was proved that keen and active competition exists in the buying of live stock at all public and private markets in the United States and in the sale of meats in every city, town, and village in the United States; that the Morris purchase had not lessened either the degree or amount of this competition and had not resulted in a monopoly or created in Armour and Company any power to restrain commerce or to depress or control prices, and that Armour and Company had not been guilty of any unlawful or unfair business method or practice; that the existence of such competitive conditions was proved in said proceeding by the testimony of numerous packers, wholesale and retail meat dealers, jobbers, commission men, order buyers and producers of live stock; that according to reports of the Bureau of the Census of the United States, there were in existence in 1923 in the United States, 1,397 meat packing establishments which produce products of a value of more than $5,000 per year, but in said anti-trust proceeding before the Secretary of Agriculture the government did not produce as a witness a single competitor of Armour and Company who testified that a monopoly then existed in the buying of live stock or in the sale of meats, or that Armour and Company had any power to fix or control or depress the price of either live stock or meats, or that Armour and Company had been guilty of any unfair business method or practice.

[fol. 254] (19) That on September 14, 1925, the Secretary of Agriculture of the United States entered an order in said anti-trust proceeding, and held and determined in part:

"There is not in this record sufficient evidence upon which to base a conclusion that the acquisition of the physical properties, business and good will of Morris & Company by Armour and Company was for the purpose of manipulating or controlling prices in the buying of live stock in commerce or in the sale or distribution of their products, or of creating a monopoly in the acquisition of, buying, selling, or dealing in such articles in commerce, or of restrain-

ing commerce. On the contrary, the evidence is persuasive that it was for the purpose of effecting economies in the conduct of Armour respondents' business by reducing overhead expenses and increasing the volume of sales of the finished products.

"There remains, therefore, for consideration, whether this acquisition by Armour and Company has had the effect of manipulating or controlling prices in commerce, or of creating a monopoly, in the acquisition of, buying, selling, or dealing in any articles of commerce, or of restraining commerce.

"The evidence in the record does not warrant the conclusion that the purchase by Armour and Company of the physical properties, business and good will of Morris & Company has had the effect of unduly or arbitrarily lowering prices to the shipper who sells live stock, or unduly and arbitrarily increasing the price of live stock products to the consumer who buys, or otherwise manipulating or controlling prices in commerce.

"The evidence discloses that since the acquisition of Morris & Company by Armour and Company the latter has controlled less than 25 per cent of the Federal inspected slaughter and less than that controlled by Swift & Company. The undisputed evidence shows that competition on the whole in the sale of meats and meat food products in interstate commerce has not been diminished. Consequently, the acquisition has not had the effect of creating a monopoly.

"The question still remains whether this acquisition has had the effect of restraining commerce. It is obvious that [fol. 255] the elimination from business of one competitor resulting from the acquisition of his business by another competitor extinguishes competition between the two and may tend to lessen competition in that field of business, but since the decisions of the Supreme Court of the United States in the Standard Oil and Steel cases (Standard Oil Co. v. United States, 221 U. S. 1; United States v. United States Steel Corporation, 251 U. S. 417), it has been settled law that the mere lessening of competition through the acquisition of one competitor by another does not amount to an unlawful restrain of trade or commerce. While Morris & Company has been eliminated as a competitor it does not necessarily follow that competition as a whole has

been thereby reduced. It may be said with very good reason that the merger has resulted in making of Armour & Company a more potential competitor of the largest existing packer, Swift & Company.

"As was said in the Steel case, 'the law does not make mere size an offense or the existence of unexerted power an offense,' but in order that such a combination may be declared unlawful, it must be shown to have restrained trade or commerce unreasonably or unduly, or that the power thereby acquired is being used for the accomplishment of the evil which the law was aimed to prevent. • • •

"Much evidence was introduced both by the Government and the respondents as to the effect of competition before and since the acquisition. The overwhelming weight of the testimony is in favor of the view that competition has not been materially lessened by reason thereof, either in the buying of live stock or the sale of the meat or meat products thereof. Scores of independent packers were called by the respondents and they all testified that in the handling and sale of meat and meat food products competition has been keen and active. Many large retail dealers scattered throughout the country were placed on the stand by the respondents and they testified that competition was keen and active and that no unfair practices or coercive methods had been engaged in by Armour and Company. The evidence further discloses that during the last decade [fol. 256] both the number of independent packers of substantial size and the volume of business done by them have largely increased."

The Report of the Trustees Regarding Conditions in Stock Yards

(20) That on April 12, 1921, the Hon. George Sutherland and the Hon. Henry W. Anderson were appointed trustees by this court of the capital stock owned by the Swift and Armour defendants in public stock yards companies; that thereafter said trustees, assisted by a special assistant attorney general of the United States, conducted hearings at all of the public stock yards in which either the Swift or Armour defendants had a substantial interest; that such hearings were exhaustive and were held after notice had been posted in the respective yards and pub-

lished in the press, inviting all persons interested in the stock yards or doing business therein, as well as leading citizens of said districts, to appear and testify; that in response to such notices and invitations, federal and state officials, live stock association and exchange officials, live stock market newspaper publishers, bankers, producers, commission men, and others appeared before said trustees and testified regarding conditions and practices in said stock yards; that a voluminous record of such testimony and a report thereon rendered by said trustees on April 8, 1922, were filed with this court and made a part of the record in this proceeding, and said report so rendered by said trustees on April 8, 1922, as hereinafter shown, discloses the conditions existing at said yards and what effect the ownership of or interest in said yards by said defendants has had so far as the same apply to the charges made in the Government's original petition filed herein.

[fol. 257] (21) That the reasons assigned by the petition filed in this proceeding to sustain the prayer that the court compel the defendants to dispose of their interests in stock yards, terminal railways, market and trade journals, and other facilities appurtenant to the stock yards were that the control of stock yards carried with it the power

(1) To make arbitrary charges for services rendered by the stock yards companies;

(2) To favor particular commission men in the allotment of pens;

(3) To grant monopolies to stock yards banks, cattle loan institutions, rendering plants, and terminal railways;

(4) To prevent the establishment of any new packing plants, and to hamper the growth of those in existence;

(5) To prevent the development of stock yards and limit the number of new markets and to centralize and restrict business of the stock yards controlled;

(6) To increase or diminish the flow of live stock to the market through the exclusive access to information regarding receipts and sale of live stock, and the dissemination of news through market newspapers and journals controlled by the packers.

(22) That in and by said report of April 8, 1922, the said trustees appointed by this court described the nature and extent of the various hearings held by them, and reported to this court in part as follows:

"Terminal railroads exist in connection with stock yards on all yards visited by your trustees and, as your trustees are advised, at other yards not so visited * * * These terminal railroads are under the supervision of the Interstate Commerce Commission and of the state public utility commissions within the limits of their jurisdiction. Their rates are on file with the Interstate Commerce Commission. * * *

"While each of the commission men, traders, and speculators naturally desire to secure the best locations possible [fol. 258] in the yards, we find no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justness to all concerned. * * *

"Your trustees were unable to find any ground for complaint as to the conduct of the weighing operations and there was no suggestion that it was not fairly and justly done. * * *

"Your trustees found no objection to or criticism of the stock yards' charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, traders, and speculators, it is necessary in order to provide adequate revenue that the stock yards companies should charge a profit upon the feed used for cattle while on the yards, and this charge as well as the yardage charge is of course charged back against the producer or shipper of cattle. Since farmers who are also stock raisers produce and sell the feed, the difference in the prices realized by them for their feed in the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. * * *

"Since the enactment by Congress of the Packers' Stock Yards Control Act of 1921, these matters of administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just grounds are shown therefor. * * *

"At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other animal products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this court. The evidence showed that in no instance was the rendering plant controlled by the stock yards company, and in fact, your trustees found no instance in which the stock yards company had any interest in the company [fol. 259] operating the rendering plant. Your trustees found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give the stock yards company some responsible agency to which it could look for the prompt removal of dead animals, which was essential to the sanitary condition of the yard. The reason given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stock yards companies and the rendering plants which they deemed a violation of the anti-trust laws of the United States or of the decree of this court. * * *

"There is maintained and operated at the administration or exchange building at each of the stock yards visited and, as your trustees are advised, at the other company yards also, a stock yards bank. This institution leases its quarters in the administration building from the stockyards company, and in no instance did the testimony show that the stock yards company was in any wise interested in the stock of the bank or had any control over the operation thereof. * * *

"Your trustees could find nothing in the relations between these banks and the stock yards companies in violation of the anti-trust laws of the United States or of the decree of this court."

"In each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulated generally in the territory served by these yards. This newspaper in each instance

is conducted in the administration or exchange building owned by the stockyards companies, leasing its offices and quarters therein from the stockyards companies. While it appeared that in some instances in the past the stockyards companies had been interested in the newspapers, the testimony was that such interest where it had existed, had now been disposed of and these newspapers are now owned by individuals or separate companies not connected [fol. 260] with the stockyards companies in any way and the stockyards companies have no interest therein. The testimony was that the stockyards companies did not in any way control or influence the policy or operation of these papers. * * *

"Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some instances these packing plants are located upon land owned by the stockyards companies. These packing houses constitute the principal buyers for cattle upon the local yards. While the larger packing companies maintain packing houses at nearly all of these yards and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyards companies against such independent plants either in leasing land upon which to locate said plants or in any other manner. The testimony both of the officers of the stockyards companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards with a view to the development of their markets and resulting increase in their business.

* * * * * * *

"Your trustees directed an inquiry at each place to the question of the effect, if any, of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market and especially upon com-

petition between buyers upon the yards, with a view to carrying out the instruction of the decree to ascertain if there was in the management of the stockyard companies any violation of the anti-trust laws of the United States or of the decree of this Court. The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers and other persons examined by your [fol. 261] trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards or the price of cattle sold thereon. * * * In some instances, the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competition in buying upon the yard, not only as between the buyers for the packers but between buyers for the packers and traders and speculators and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyards companies had no bearing upon the question of competition between the buyers and did not result in any discrimination by the companies in favor of the packers. * * *

"Your trustees directed their inquiries especially to the management of the yards with a view to ascertaining if there was any violation of the anti-trust laws of the United States or of said decree which would require them to vote the stock for change of management. Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their view as to the policy of the ownership of stock in the yards by the packers, that the present management of the yards visited was excellent and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted had been remedied when brought to the attention of the stockyards companies. Even those persons who were strongly opposed on principle to the ownership of stock in the stock-

yards companies by the packers admitted that the management was good and could suggest no improvement therein. After most careful investigation your trustees were unable [fol. 262] to discover anything in the present management of these yards which was in violation of the anti-trust laws of the United States or of the decree of this Court in this cause. * * *

"Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said stockyards and stockyard terminal railroads are not now being used in violation of the anti-trust laws of the United States or of the decree of this Court entered in this cause."

Changes in the Capital Stock, Funded Debt, and Corporate Organization of Armour and Company and Its Subsidiaries Since the Entry of the Decree of February 27, 1920

(23) That at the time of the entry of said decree of February 27, 1920, the authorized capital stock of Armour and Company was $210,000,000.00, consisting of $60,000,000.00 7% cumulative preferred stock and $150,000,000.00 of common stock; and at said time the funded debt of Armour and Company consisted of $50,000,000.00 first mortgage 4½% gold bonds and $9,599,200.00 of 6% serial convertible gold debentures; that on July 15, 1920, Armour and Company issued and sold $60,000,000.00 of its 7% 10-year convertible gold notes, and on July 27, 1920, Armour and Company increased its authorized capital stock from $210,000,000.00 to $400,000,000.00 consisting of $100,000,000.00 of 7% cumulative preferred stock, $150,000,000.00 of Class A common stock, and $150,000,000.00 of Class B common stock; that in 1922 Armour and Company was refinanced and in connection with said refinancing a new corporation under the name of Armour and Company of Dela- [fol. 263] ware was organized under the laws of the State of Delaware and acquired ownership of a substantial part of the physical properties and assets of Armour and Company of Illinois; that in consideration of the transfer of

said properties to the Delaware corporation it issued and transferred to Armour and Company of Illinois $60,000,000.00 par value of its common stock and $60,000,000.00 par value of its 7% non-voting preferred stock; that Armour and Company of Illinois on December 29, 1922, sold said $60,000,000.00 par value of the preferred stock of Armour and Company of Delaware to the public; that at or about the time of its organization, Armour and Company of Delaware also issued and sold $50,000,000.00 par value of its first mortgage 5½% gold bonds and paid the proceeds derived from said sale to Armour and Company of Illinois; that $66,658,815 of the funds thus realized by Armour and Company of Illinois were used for the purpose of calling its outstanding gold notes of 1920 and its outstanding gold debentures of 1918 and the balance of said sum was used by Armour and Company of Illinois for the purpose of retiring current indebtedness and as additional working capital in its business; that after the completion of said refinancing in 1922 the funded debt of Armour and Company of Illinois and Armour and Company of Delaware amounted to $100,000,000 and the authorized capital stocks of the Illinois and Delaware companies amounted to $560,000,000, and the issued portions thereof, were listed and traded upon the New York and Chicago Stock Exchanges (with the exception of the common stock of the Delaware company, all of which is owned by the Illinois company).

(24) That at the present time the outstanding capital stock of the Illinois company is owned by more than 45,000 shareholders and the outstanding preferred capital stock [fol. 264] of the Delaware company is owned by more than 36,000 shareholders (an aggregate of more than 80,000 shareholders), whereas at the time of the entry of said decree of February 27, 1920, substantially all of the common capital stock of Armour and Company of Illinois was owned by members of the Armour family and the preferred stock of said company was distributed among approximately 7,400 shareholders.

(25) That, when the purchase of the business and properties of Morris & Company by Armour and Company was consummated on March 28, 1923, substantially all of said properties of Morris & Company were conveyed and trans-

ferred to The North American Provision Company, a corporation organized under the laws of the State of Illinois and a wholly owned subsidiary of Armour and Company of Delaware.

(26) That since the entry of said decree of February 27, 1920, the defendants Armour & Company, a corporation organized under the laws of the State of Texas and The Colorado Packing & Provision Company, a corporation organized under the laws of the State of Colorado, have been dissolved; that since the entry of said decree of February 27, 1920, the individual defendants, J. Ogden Armour and Charles W. Armour have died; that since the entry of said decree of February 27, 1920, the individual defendants, Robert J. Dunham and George F. Robbins, have been dismissed as defendants to this proceeding, and the defendant, Frederick W. Croll, has severed all of his connections with Armour and Company and its affiliated and subsidiary corporations and should, therefore, be dismissed as a defendant to this proceeding.

[fol. 265] The Interveners

(27) That in 1921 the Southern Wholesale Grocers Association, now known as American Wholesale Grocers Association, filed in this Court a petition for leave to intervene and procured the entry of an order permitting such intervention without notice to the United States or to any of the defendants to this proceeding; that upon learning of this action, the attorneys for the United States moved to set aside and vacate such order of intervention, but this Court refused to sustain said motion and permitted the order of intervention to remain in effect and thereafter allowed a similar intervention by the National Wholesale Grocers Association; that this Court permitted such intervention in part upon the ground that the protection afforded to the interveners by the decree of February 27, 1920 "might have been secured in a proceeding in their own name and behalf"; but your petitioners allege that a decree restraining the defendants to this proceeding from engaging in the business of selling the commodities known as unrelated lines or from selling meats at retail would be illegal and unlawful if entered in a suit instituted by a private individual or corporation and that the

said interveners could not have obtained such a decree in a proceeding instituted in their own name and behalf.

The Decision of the Interstate Commerce Commission in 1921

(28) That the interveners contended in this proceeding that the restraining clauses of the decree of February 27, 1920, prohibiting the defendants from engaging in the business of manufacturing, transporting, distributing or otherwise dealing in the commodities known as unrelated lines, were and are necessary because the defendants had an undue and illegal competitive advantage in the distri- [fol. 266] bution of said unrelated lines in that they were permitted to use and did use their refrigerator cars in transporting said commodities and thereby secured quicker and more certain deliveries than obtainable by the wholesale grocers; that subsequent to the entry of said decree of February 27, 1920, the same complaint was made before the Interstate Commerce Commission by the National Wholesale Grocers Association and the American Wholesale Grocers Association, the interveners in this proceeding, in the case of National Wholesale Grocers Association of the United States v. Director General, Alabama & Vicksburg Railway Company, et al., and in the case of Southern Wholesale Grocers Association v. Southern Railway Company, Director General as Agent, et al., 62 I. C. C. Rep. 375 (submitted January 5, 1921, decided June 22, 1921); that petitions in intervention were filed in said proceedings before the Interstate Commerce Commission by numerous wholesale grocer associations and also by the primary defendants to this proceeding and by John Morrell & Company, T. M. St. Clair & Company, Jacob E. Decker & Sons, Rath Packing Company, Iowa Packing Company, George A. Hormel & Company, and Kingan & Company, all of whom are packers and competitors of the defendants herein; that in its decision rendered on June 22, 1921, the Interstate Commerce Commission said in part:

"The gravamen of the complaints with respect to service is twofold. The complainants contend (1) that by shipping unrelated articles, as hereinafter explained, in the packers' peddler and branch-house cars with fresh meats and packing-house products, the packers obtain more

speedy transportation and more prompt delivery than if such articles were shipped by them through the carriers' freight houses in the regular merchandise cars ordinarily used by the wholesale grocers and jobbers, and (2) that the carriers unjustly discriminate against the wholesale grocers [fol. 267] in their failure to maintain less-than-carload refrigerator service to many points which are served by the packers' peddler cars. The complainants do not demand the discontinuance of the packers' peddler or branch-house cars, but ask that the packers be forbidden to ship in such cars commodities which are not the products of slaughtered animals. This demand, they say upon their brief, is the issue between the packers and the wholesale grocers in this controversy, stated in one sentence."

That the said Interstate Commerce Commission thereupon reviewed the facts in the record at great length and reached the following conclusion:

"Upon consideration of all the facts of record, we find that the practices of defendants [railroad companies] in permitting the meat packers to load certain articles of groceries in their peddler and branchhouse cars is not shown to result in undue prejudice to complainants or unduly to prefer the packer."

(29) That if the decree of February 27, 1920 is modified as hereinafter prayed so as to permit the defendants to engage in the business of dealing in said unrelated commodities, the interveners will not thereby be subjected to any unfair or illegal prejudice; that numerous packers in the United States who are competitors of the defendants but are not parties to this proceeding and are, therefore, not affected by this decree, own or operate refrigerator cars and have the right to ship and do in fact ship such unrelated commodities in said refrigerator cars and as shown by said decision of the Interstate Commerce Commission, the action of common carriers in permitting this to be done does not unduly prejudice the wholesale grocers; that since the entry of said decree of February 27, 1920, there has been a tremendous and nation-wide development of motor truck transportation in the United States; that the extensive building of hard roads and the perfection of motor-driven vehicles in the last ten years have produced

[fol. 268] radical changes in the field of transportation; that since the entry of said decree, many meat-packing concerns in the United States have acquired and are operating motor trucks provided with refrigeration; that the business of the wholesale grocer is peculiarly adapted to transportation by motor truck; that there are approximately 6,000 wholesale grocers located in approximately 2,300 cities throughout the United States, and that the great majority of such wholesale grocers respectively conduct their business or a major portion thereof within comparatively small districts easily reached by motor truck; that the products sold by said wholesale grocers are now distributed principally and in many cases almost exclusively by means of motor trucks; that the defendants to this proceeding have no advantage in the field of motor truck transportation and that the decree of February 27, 1920 is wholly unnecessary to protect the wholesale grocers against the effect of said alleged advantages in transportation, and your petitioners are informed and believe and upon such information and belief allege that the sole motive of the interveners in opposing a modification and amendment of said decree of February 27, 1920, is to avoid the increased competition which will result in the wholesale grocery business if the defendants to this proceeding are permitted to engage in the business of dealing in said unrelated commodities.

The Loss of Business by the Defendants and the Acquisition of Such Business by Their Competitors

(30) That when said decree of February 27, 1920 was entered, the last available statistics regarding the amount and percentage of live stock slaughtered by the defendants to this proceeding were for the government fiscal year ending June 30, 1919; that during said year 1919 the de- [fol. 269] fendants to this proceeding (including Wilson & Co. and Morris and Company), according to information compiled by the Secretary of Agriculture of the United States, slaughtered 69.3 per cent of all animals slaughtered in the United States under federal inspection, whereas during the government fiscal year 1929 their combined slaughter, according to figures derived from the same source amounted to 56.5 per cent of all animals slaughtered under federal inspection; that this loss in business amounting to

12.8 per cent of the total federal inspected slaughter in the United States has been acquired by competitors of these defendants; that said figures relating to federal inspected slaughter do not include animals slaughtered in intrastate packing plants or animals slaughtered on farms; that exact statistics regarding the extent of said farm and other intrastate slaughter are not obtainable but according to the best estimates available, said defendants to this proceeding slaughtered 48.2 per cent of the total of all animals slaughtered in the United States in the government fiscal year 1919 and by 1929 this percentage had decreased to 36.2 per cent; that the total slaughter of Armour and Company and its subsidiaries during the government fiscal year 1919 amounted to 18.8 per cent of the total slaughter in the United States and in the government fiscal year 1929 amounted to 12.8 per cent of the total slaughter in the United States.

Present Competitive Conditions in the Purchase of Live Stock

(31) That at the present time there are 72 public stock yards in the United States subject to the jurisdiction of the Secretary of Agriculture under the Packers' and Stock Yards Act of 1921, and in addition thereto there are numer- [fol. 270] ous private stock yards in the United States at which large quantities of live stock are bought and sold but which are not subject to the jurisdiction of the Secretary of Agriculture; that the producers of live stock in the United States dispose of their live stock by numerous methods, among which are (a) sales on the public markets either by means of direct shipments to commission men located at said markets, or by means of shipments through cooperative marketing and shipping associations, (b) by sales directly to packers which are made either by direct shipments to private yards adjacent to plants, by selling to packer country buyers, or by contract for future delivery, (c) by sales to local butchers, (d) by sales on farms to speculators or to commission men from nearby markets, (e) by auction sales, and (f) by slaughtering on farms both for home consumption and to sell as carcass meats.

That purchases on the public stock yards are made (a) by buyers in the employ of packing plants, (b) by producers who purchase animals called stockers and feeders for fur-

ther feeding, (c) by order buyers who purchase for packers not located at the particular market where purchases are made, and (d) by traders and speculators who sort and grade mixed lots of animals and deal in live stock on their own account with a view to re-selling at a profit.

(32) That the Bureau of Agricultural Economics of the Department of Agriculture of the United States maintains market reporters at many of the public live stock markets and disseminates news regarding receipts and prices several times a day by means of telegraph and radio broadcasting; that numerous private agencies render similar services and that complete and accurate information regarding the receipts of live stock, classes, grades and [fol. 271] prices, is promptly disseminated throughout the United States, particularly since the advent of the radio, which has been developed since the entry of the decree of February 27, 1920; that innumerable packers located throughout the United States keep in close touch with receipts and prices at the different public markets in the United States and place orders by telegram to order buyers located at the various markets for the purchase of their requirements of live stock; that such orders are sent to the markets where prices appear to be the most favorable to the purchaser; that the producers of live stock in the United States also keep in close touch with receipts and prices prevailing at the various public markets, and ship their live stock to the market which in their opinion is at the time, the most favorable for the sale of the particular class and grade of live stock which they have to sell; that the combined action of innnumerable packers in making purchases through order buyers at markets where prices are temporarily low and of producers in diverting shipments from such markets has the effect of producing uniformity in prices for the same classes and grades of live stock upon all of the public markets in the United States, taking into consideration differentials in freight; that this uniformity in price is largely due to the thorough and complete dissemination of market news which results in said diversion of shipments and an increase of purchases on temporarily low markets and an increase in shipments and a diversion of purchases at temporarily high markets; and that this thorough and prompt dissemination of market news has largely developed since the public stock yards

of the country were placed under the jurisdiction of the Secretary of Agriculture by the Packers' and Stock Yards Act of 1921; that by reason of these facts it would be im- [fol. 272] possible for any packer or group of packers to establish and maintain for any length of time a monopoly in the purchase of live stock; that price statistics show that the prices of live stock at particular markets are not affected by the percentage of the receipts of that market which may be purchased by any packer.

Present Competitive Conditions in the Sale of Meats and Meat Food Products

(33) That the commodity dealt in by packers is perishable, and when produced must be sold within a comparatively short time, regardless of the price obtainable; that in the sale of this perishable commodity the various types of competition encountered by the defendants to this proceeding are (a) the national packers, who owns numerous branch houses which entail a large investment and overhead and necessitate the maintenance of a particular volume of business, (b) the local slaughterer and packer, who kills and sells locally, and also sells at distant points by means of express and truck shipments when conditions are such that he can sell at such markets to an advantage, (c) the non-slaughtering packer, who either utilizes the custom killer or abattoir or buys carcass meats and manufactures and processes the same to sell at near and distant points, (d) the periodical packer, who has little or no investment and operates when conditions are favorable and discontinues operations during the periods when the relation between live stock and meat prices is such that there is no profit in the business, (e) the farm killer, who slaughters both for home consumption and to sell on nearby markets, and (f) the various selling agencies many of whom do no slaughtering or manufacturing, but sell all kinds of meats on their own account and for others in a representative capacity, which class includes the wholesale meat dealers, [fol. 273] brokers, jobbers, and consignees; that the small packer who maintains no fixed investment in numerous branch houses has a tremendous advantage over the large packer and earns more money on investment and on sales than the large packer; that the large packer maintaining a branch house in a particular city is obliged to do business

in that city, regardless of conditions prevailing in the wholesale meat market; that if such a city is glutted by excess shipments of fresh meats with a resulting decrease in price, the large packer cannot discontinue business because of the investment and continual overhead expense incurred in connection with the maintenance of such branch house, whereas the small packer, who ships by means of refrigerator car and express shipments, or by motor truck, can discontinue business in that particular city until the over-supply of the perishable commodity has been absorbed and prices restored to their former level.

The Armour-Morris Anti-trust Proceeding Instituted by the Secretary of Agriculture Established That a Monopoly in the Packing Industry is not Possible

(34) That at the hearing conducted by the Secretary of Agriculture in the anti-trust proceeding instituted as a result of the acquisition of Morris & Company by Armour and Company, heretofore referred to, it was established by the testimony of producers of live stock, packers, commission men, market reporters, and wholesale meat dealers, and it is a fact that it would not be possible for any combination of packers to create a monopoly in the packing industry for the reasons among others:

(a) That it is impossible for packers to control the supply of raw material, namely, live stock, which is produced on more than 6,000,000 farms in the United States and on the western ranges;

[fol. 274] (b) Any attempt to lower prices of live stock at any market is promptly met by a withdrawal of supplies from that market and an increase in purchases;

(c) The commodity sold is a perishable commodity;

(d) There are no patent rights involved relating to equipment, and any one can enter the business with limited capital and successfully compete with any capital invested, no matter how large;

(e) The profit which the packer makes depends upon the relation which exists from time to time between live stock prices and wholesale meat prices, and the price levels of these commodities fluctuate in about the same proportion;

that the total amount realized from the sale of all meats and by-products of the packing industry is approximately 15 per cent greater than the amount paid by packers for the live stock from which the meat and by-products are produced; that if wholesale meat prices should attain a level beyond this usual spread between live stock prices and wholesale meat prices, the producer would kill his own live stock and sell the carcasses, or the consumer of the finished product would reduce the amount of his consumption;

(f) If the prices paid for live stock should be reduced below real values, the producers of the country would discontinue the production of live stock.

Introductory Allegations Regarding the Radical and Extensive Changes in Marketing Methods Since the Entry of the Decree of 1920

(35) That fundamental and nation-wide changes in methods of marketing and distributing commodities including food products have occurred since the entry of the decree of February 27, 1920; that in 1920 and prior thereto the general method employed in marketing and distributing commodities ultimately sold at retail was from manufacturer—to wholesaler—to retailer—to consumer, and under such conditions the manufacturer, wholesaler and retailer each performed separate and distinct func- [fol. 275] tions; that since 1920 there has been a pronounced and nation-wide movement in the food industry and in many other industries to effect economies and enlarge sales and reduce the ultimate cost to the consumer; that the principal method employed to effect this result has been a consolidation of the various market functions by making food and other commodities move directly from manufacturer to consumer without the intervention of the wholesaler or independent retailer; that this change in marketing methods has been initiated both by the manufacturer in establishing retail outlets for his products and by retail stores in entering the manufacturing field and producing some or a part of the products they sell, and this in turn has compelled wholesalers, jobbers and other middlemen to create their own retail outlets and to enter the manufacturing field; that this change in marketing

methods commenced in a small way prior to 1920 and the new method of marketing and distribution existed to a comparatively insignificant extent and with little or no appreciable effect at the time of the entry of the decree of February 27, 1920, but since said date the new methods of marketing and distribution have been developed to a high degree and have attained a proportion which was not anticipated or considered reasonably possible in 1920.

(36) That the above-described trend toward integration and the elimination of the middleman has been accompanied by mass production and selling and by an enormous development of brands, particularly as to food products and also by a tendency on the part of retail stores and particularly chain stores to handle a diversified line of products; that standardized mass production and the development of brands with resulting assurance of uniform [fol. 276] quality have played a conspicuous part in developing the new distribution methods and in eliminating the middleman.

(37) That this recent trend toward integration and the elimination of the middleman is illustrated by the recent history of numerous industries; that in the drug business there were in 1927, 347 chain organizations operating 3,155 retail drug stores, and at the present time practically every large drug store chain manufactures a substantial part of the drugs it sells at retail; that chain drug stores had become so extensively established by 1928 that the Supreme Court took judicial notice thereof, saying in part, "It is a matter of public notoriety that chain drug stores in great numbers, owned and operated by corporations, are to be found throughout the United States." (Liggett Co. v. Baldridge, 278 U. S. 105, 113); that in the clothing business there were in 1927, 230 chain organizations operating 2,180 retail stores selling men's clothing and furnishings, and 215 chain organizations operating 2,036 retail stores selling women's wearing apparel; that between 1920 and 1929 the leading chain organizations selling clothing for men and women increased their sales 333 per cent, whereas wholesale firms handling the same commodity suffered an actual decrease in sales; that the large mail order con-

cerns have followed the recent trend toward integration, and Sears-Roebuck & Company now operate 70 large department stores and more than 200 smaller retail stores, and Montgomery Ward & Company during the past two years has opened 532 retail stores and has recently announced an intention to open 1,500 additional retail stores; that in 1920 there were approximately 27,000 retail chain grocery stores in the United States, whereas in the year 1929 there were in existence in the United States approxi- [fol. 277] mately 800 chain store organizations operating approximately 75,000 retail grocery stores; that between 1920 and 1929 the leading chain grocery store organizations increased their sales approximately 255 per cent, whereas the sales of the leading wholesale grocery organizations substantially decreased.

(38) That the recent change in the scope of the business of retail stores and their handling of a diversified line of products is illustrated in the modern retail chain drug store which handles food and an endless variety of commodities not formerly associated with the drug business; by the modern retail chain grocery store, which sells cigars, cigarettes, tobacco, household utensils, drug items, candy, soft drinks, hardware, and also meat products; by the modern chain cigar store which sells candy and minor drug items; by the modern chain shoe store which frequently sells hosiery and knit goods, and by the vast variety of products handled in the modern 5 and 10 cent stores.

(39) That the above described changes in marketing methods have effected economics in operation and reduced prices to the consumer; that this trend toward integration, mass selling, the handling of branded products, and of diversified lines is rapidly and continuously increasing, but that the decree of February 27, 1920 prohibits the defendants to this proceeding from adapting their businesses to the changed economic conditions; that the normal outlet in 1920 for the products manufactured by the defendants was the wholesaler whose volume has been reduced to a large degree by the trend toward integration, and the independent retailers who have been substantially reduced in number and in volume of business because of the enormous development of chain store organizations; that the decree of February 27, 1920 prevents the defendants from follow-

ing the marketing trend from manufacture to consumer and prevents the defendants from selling the unrelated commodities and developing brands therein and thus [fol. 278] neutralizing the effect of the serious loss in the business formerly done by them with the wholesaler and independent retailer; that said decree of February 27, 1920 compels the defendants to concentrate all of the tremendous overhead involved in the vast branch house and distributing system of the national packer, hereinafter particularly referred to, upon meats and meat food products alone and denies to them the opportunity to reduce costs and ultimately the price paid by the consumer by means of the utilization of this distributing system in handling commodities other than meats and meat food products.

The Development of Grocery Chain Stores Since 1920

(40) That at the time of the entry of the decree of February 27, 1920, chain grocery stores were a comparatively small factor in the sale and distribution of food products and were a negligible factor in the sale and distribution of meats; that as heretofore stated, the total number of chain grocery stores in the United States has increased from approximately 27,000 in 1920 to approximately 75,000 in 1930; that the total sales of all grocery chain stores in the United States have increased from approximately $700,000,000 in 1918 to approximately $3,500,000,000 in 1929; that according to statistics complied and published by the Federal Reserve Board, the total sales of the leading grocery chain store organizations in the United States have increased approximately 255 per cent from 1920 to 1929; that at the present time approximately 40 per cent of the retail grocery business of the United States is done by chain grocery stores; and your petitioners are informed and believe and upon such information and belief state the fact to be that the following tabulation shows with approximate accuracy the percentage of retail grocery business done in the larger cities of the United States by chain grocery stores:

[fol. 279]

Newark, N. J.	75%	Philadelphia, Pa.	65%
Jacksonville, Fla.	75%	Washington, D. C.	65%
Columbus, Ohio	73%	Jersey City, N. J.	65%
Dallas, Texas	72%	Boston, Mass.	61%
Cleveland, Ohio	70%	Detroit, Mich.	60%
Tulsa, Okla.	67%	Norfolk, Va.	60%
Memphis, Tenn.	66%	Rochester, N. Y.	60%
Nashville, Tenn.	65%	Chicago, Illinois	50%
New York, N. Y.	65%		

(41) That The Great Atlantic & Pacific Tea Company is the largest chain grocery store organization in the United States and owns and operates 62 warehouses, 32 bakeries, six salmon canneries in Alaska, five manufacturing plants, two cheese plants, and 16 meat establishments under Federal inspection; that the number of stores operated by it have increased from 4623 in 1919 to approximately 16,500 in 1929, and that its sales have increased from approximately $190,000,000 in 1919 to approximately $1,100,000,000 in 1929; that The Great Atlantic & Pacific Tea Company has no funded debt and according to its published balance sheet for the year ended February 28, 1929, it had cash on hand in the sum of $22,876,396, securities of a value of $9,058,451 and a surplus of $42,241,304, and in 1929 its profits after deductions for depreciation and Federal taxes amounted to $24,220,982.

(42) That the Kroger Grocery & Baking Company, another large chain store organization, owns and operates its own bread, cake, and cracker bakeries, coffee roasting plants and general manufacturing plants for the production of candies, spices, teas, and extracts, meat packing plants at Cincinnati and Columbus, Ohio, and a sausage factory at Detroit, Michigan; that the said Kroger Grocery & Baking Company has increased the number of retail stores operated by it from approximately 780 in 1919 to approximately 6,000 in 1930, and has increased its sales from approximately $34,600,000 in 1919 to approximately [fol. 280] $293,000,000 in 1929; that it acquired 1417 new retail stores between June, 1928, and January, 1929, and its sales in 1929 were more than 40 per cent in excess of its sales for 1928.

(43) That Safeway Stores, Inc., was organized in 1926 with 834 retail grocery stores, and now operates 2250 retail grocery stores; that its sales in 1927 amounted to approximately $69,000,000, in 1928 amounted to approximately $103,000,000, and in 1929 to approximately $213,000,000; that during the year 1929 said company opened 314 new meat markets and acquired an additional 197 meat markets by purchase and also opened or acquired 29 warehouses, 7 bakeries and 2 creameries; that such investments and expenditures made by Safeway Stores, Inc. during 1929 amounted to more than $13,500,000, and in December, 1929 said company was operating 1366 retail meat markets in connection with its grocery stores as compared with 855 meat markets operated by it in 1928; that the American Stores Company operated 1151 retail Grocery Stores in 1920, and has approximately 2600 retail grocery stores at the present time, and has increased its sales from approximately $76,400,000 in 1920 to approximately $143,000,000 in 1929; that National Tea Company operated 1627 retail grocery stores in 1929, with total sales amounting to approximately $90,500,000; that The First National Stores, Inc., recently consolidated with Mayflower Stores, owns and operates 2800 retail chain grocery stores, and did a business of approximately $107,200,000 in 1929, as compared with $75,884,639 in 1928.

(44) That the total annual sales of the chain grocery store organizations in the United States at the present time amount to approximately $3,500,000,000; that ten leading chain store organizations, operating approximately 34,000 retail stores, increased their sales from approximately $1,575,000,000 in 1928 to approximately $1,975,000,-[fol. 281] 000 in 1929; that many of said chain grocery store organizations have great financial strength and are firmly established, and that the number and strength of such organizations alone proves that no defendant to this suit, or even all of the defendants to this suit, could possibly effect a monopoly or restrain trade or commerce if permitted to engage in the business of selling meats at retail and dealing in the commodities known as unrelated lines.

Recent Consolidations and Mergers in the Food Industry

(45) That since the entry of the decree of February 27, 1920, and particularly within the last few years, there has

been a general movement on the part of food manufacturers and distributors to effect consolidations or mergers of various lines of food products, and particularly nationally advertised brands; that in 1925 The Postum Company began to enlarge its output and thereafter acquired a number of corporations engaged in various branches of the food industry; that in 1929 The Postum Company changed its name to General Food Corporation, and this company is now the owner of the following corporations and brands acquired during the years indicated:

Year	Name	Product
1925	Jell-O Company	Jell-O
1926	Igleheart Bros.	Swans Down Cake Flour
1926	Minute Tapioca Company	Minute Tapioca
1927	Walter Baker & Co., Ltd.	Walter Baker Chocolate and Cocoa
1927	Franklin Baker Co.	Franklin Baker Cocoanut
1927	The Log Cabin Products Co.	Log Cabin Syrup
1927	Richard Hellman, Inc.	Mayonnaise
1928	Cheek-Neal Coffee Co.	Maxwell House Coffee
1928	La France Manufacturing Co.	Laundry Tablets and Powder
1928	Calumet Baking Powder Co.	Baking Powder
1929	Certo Corporation	Certo Products
1929	Diamond Crystal Salt Company	Diamond Crystal Salt
1929	North Atlantic Oyster Farms, Inc.	Oysters
1929	Batchelder & Snyder Co.	Meats and Hotel Supplies
1929	Arthur E. Door Co.	Meats and Hotel Supplies
1929	William A. Doe	Meats and Hotel Supplies

[fol. 282] Your petitioners are informed and believe, and upon such information and belief state the fact to be, that the sales of the General Food Corporation for the year 1928 amounted to approximately $101,000,000, and for the year 1929 amounted to approximately $128,000,000, and that its profits for the year 1929 amounted to approximately $20,000,000; that said Batchelder & Snyder Co., acquired by the General Food Corporation in 1929, is one of the oldest and best known meat and food establishments in the United States; that it operates a curing plant, lard rendering plant, sausage factory, and smoke houses, in which 25 tons of hams, bacon, and shoulders may be handled at one smoking.

(46) That Standard Brands, Inc., was organized in the year 1929, and has acquired the Fleischman Company, manufacturers of yeast, the Royal Baking Powder Company, manufacturers of baking powder, E. W. Gillett Company, Ltd., of Canada, manufacturers of baking powder, Widlar Food Products Company, manufacturers of tea,

coffee, olives, pickles, and relishes, and Chase & Sanborn Company, manufacturers of coffee and tea; that the Fleischman Company, now owned by Standard Brands, Inc., owns 24 grain elevators located in Minnesota and South Dakota, and purchases grain largely from producers; that it manufacturers distilled vinegar, salt, and yeast, and in 1928 its sales amounted to approximately $64,000,000; that the yeast produced by the Fleischman Company is distributed through 900 direct sales agencies throughout the United States and foreign countries to more than 40,000 bakeries, hotels and public institutions and more than 250,000 grocery stores and other retail merchants.

(47) That there have been since the entry of said decree of February 27, 1920, numerous other large combinations and consolidations of food manufacturers and distributors [fol. 283] and that such concerns all handle a great many branded products which are extensively and nationally advertised, and all handle a large and diversified line of products.

Sales of Meat by Chain Stores

(48) That at the time of the entry of the decree of February 27, 1920, chain grocery stores sold practically no meats and even as late as 1925, the chain grocery store was an inconsequential factor in the retail meat trade; that within the past few years chain grocery stores have rapidly expanded into the business of selling meats and meat food products at retail; that the Great Atlantic & Pacific Tea Company did not operate any meat departments in its stores in 1920 but now has approximately 3,500 stores with meat departments, and your petitioners are informed and believe and upon such information and belief state the fact to be that said Company has commenced a program which contemplates the installation of from 5,000 to 10,000 additional meat departments in their grocery stores within the next three to five years; that said Great Atlantic & Pacific Tea Company since 1920 has acquired and is now operating 16 meat establishments under Federal inspection and in such establishments cuts, cures, processes, and otherwise prepares and manufactures meats for sale in its stores at retail; that said Kroger Grocery & Baking Company operates approximately 3,000 stores with meat departments;

that said Safeway Stores, Inc. which was organized in 1926 and in 1927 operated 289 stores having meat departments now operates more than 1,366 meat departments in connection with its chain grocery stores; that said American Stores Company now operates approximately 1,000 meat departments in its chain grocery stores; that other large [fol. 284] chain store companies have in recent years installed meat departments in many of their stores and are rapidly installing others; that at the time of the entry of the decree in this cause there were but a few hundred retail meat stores operated by chain store organizations, but that chain grocery store organizations now own and operate more than 15,000 stores in which meats are sold in combination with other food products; that such concentration of retail distribution in meat and packing-house products by chain store systems has detrimentally and seriously affected the business of said defendants herein (1) by the acquisition of packing-house and processing plants by chain stores with the result that such plants obtain the entire business of such stores and these defendants have no opportunity to compete therefor (2) by thus acquiring great buying power such chains purchase large quantities at reduced cost and thus obtain a decided advantage over independent retail meat markets who under present existing conditions are the principal customers of these defendants.

(49) That the trend in the chain grocery store business is definitely toward the establishment of general food stores as contrasted with grocery stores selling groceries alone; that during 1929 the Great Atlantic & Pacific Tea Company closed a number of its smaller grocery stores and opened in lieu thereof large combination food stores; that this trend toward the establishment of general food stores and the rapid expansion of the grocery chains into the field of retail meat distribution means that the purchasing power for retail meat distribution is rapidly becoming concentrated into a relatively small number of buyers.

[fol. 285] Chain Meat Stores Operated by Non-defendant Packers

(50) That in 1920 the sale of meats at retail by packers was negligible, but at the present time numerous meat packers who are not defendants to this suit are selling

meats at retail; that Adolph Gobel, Inc., a large non-defendant packer, processor and sausage-maker, recently expanded its business by the acquisition of several competitors, namely, A. Loeffler Provisions Company, The T. T. Keane Company, The Keane Provision Company, Geo. Kern, Inc., Merkel, Inc., B. Meyer & Son, Inc., Hertz Bros. Inc., United Sausage, Inc., and Playland Refreshment Corporation, and recently acquired the properties and business of Jacob E. Decker & Sons, (a large direct competitor of said primary defendants) located in Mason City, Iowa, which slaughters more than 600,000 hogs per year and has annual sales amounting to more than $16,000,000; that said Adolph Gobel, Inc., controls and operates 29 retail meat stores known as The Merkel Chain, and your petitioners are informed and believe and upon such information and belief state the fact to be that said Adolph Gobel, Inc., is planning to engage extensively in the retail marketing of meats in New York City and vicinity; that Hygrade Food Products Corporation which was organized in 1927, acquired eight packing plants and other meat-processing plants formerly owned by Allied Packers, Inc. (a large and direct competitor of said primary defendants), and now operates 22 retail food stores; that said Hygrade Food Products Corporation by common stock ownership is also affiliated with other retail stores, such as United Cigar Stores, Happiness Candy Stores, Neve Drug Stores, and Whelan Drug Stores, and has established and operates food and refreshment [fol. 286] stands in connection with automobile service stations operated by Beacon Oil, Inc.; that the Frye Packing Company (a direct competitor of said primary defendants) of Seattle, Washington, operates 50 retail meat stores in Seattle, and is planning to expand its chain of stores to Portland and other cities; that certain New Orleans meat packing companies either have obtained or are obtaining control of a chain of 27 retail meat markets in that city, and other non-defendant meat packers, processors and slaughterers are also selling meats at retail.

Voluntary Chains

(51) That the development of the chain store has resulted in an entirely new and very rapid development of co-operative organizations of retail grocers generally.

known as voluntary chains; that a voluntary chain is a group of retailers (each of whom owns and operates his own store) who act co-operatively or associate themselves with a wholesale grocer chiefly for the purpose of obtaining the advantages of concentrated buying and thus meeting chain store competition; that such chain stores have been created by wholesale grocers seeking to counteract a decreasing volume of business by inducing a number of retailers to concentrate purchases and have also been created by the action of retailers in organizing for the purpose of co-operative buying and advertising.

(52) That in December, 1929, there were approximately 421 such voluntary chains in the United States, of which approximately 216 are organized and managed co-operatively by retailers and approximately 205 are sponsored and directed primarily by wholesalers, and such 421 voluntary chains are scattered throughout the United States and [fol. 287] have a membership consisting of approximately 60,000 retail grocery store-; that said 60,000 grocery stores in voluntary chains are separate from and in addition to approximately 75,000 stores operated by regular chain grocery store organizations as heretofore stated, so that the regular chain store organizations and the voluntary chains combined operate approximately 135,000 grocery stores in the United States.

(53) That among such voluntary chain organizations are included the Independent Grocers Alliance, the Red & White Stores, Nation-Wide Stores, Creasey Corporation, Inc., Clover Farm Stores, and United Purity Stores; that said Independent Grocers Alliance has a membership of approximately 10,000 retail grocers affiliated with 52 wholesale grocers and does an annual business of approximately $350,000,000; that said Red & White Stores has a membership of approximately 5,500 retail grocers affiliated with 25 wholesale grocers; that said Nation-Wide Stores has a membership of approximately 2,500 retail grocers, Creasey Corporation, Inc., has 9,300 retail grocers, Clover Farm Stores, 2,000 retail grocers, and United Purity Stores, 1,200 retail grocers; that the development of said voluntary chain organizations has been rapid and nationwide; that many of said grocery stores operated in voluntary chains

sell meats at retail and that the number of voluntary chain stores is rapidly increasing.

The Profits of the Defendants as Compared with the Profits of the Leading Chain Store Organizations

(54) That the profits of the defendants to this proceeding computed upon the basis of investment and upon the basis of sales are exceedingly small and demonstrate the absence of any monopolistic control in the purchase of live stock or [fol. 288] in the sale of the products thereof; that the combined profits of the defendants to this suit during the year 1929 amounted to 4.57 per cent of their aggregate investment, whereas the Great Atlantic & Pacific Tea Company, according to its published balance sheet for 1929 earned a profit (after making deductions for depreciation and Federal taxes) of $24,220,982 upon an investment of $132,740,468, or approximately 18 per cent; that the profit of Armour and Company during the year 1929 amounted to but 3.54 per cent on its investment; that the combined net profits earned by five large grocery chains, namely, the Great Atlantic & Pacific Tea Company, Kroger Grocery & Baking Company, American Stores Company, Safeway Stores, Inc., and National Tea Company during the year 1928 averaged 2.7 on sales, as compared with an average of 1.24 on sales earned by the defendants to this suit and as compared with 1.16 per cent on sales earned by Armour and Company; that the average net profit of said five chain store organizations during 1928 was approximately 23 per cent on their aggregate net worth consisting of capital stock and surplus as compared with approximately a five per cent profit earned by the defendants to this suit on their aggregate net worth during the same year; that the average net profits of said five chain store organizations during 1928 was 16.6 per cent of the amount of their total combined assets, as compared with a profit of 5.14 per cent of investment earned by the defendants to this suit and as compared with the profit of 4.09 per cent earned by Armour and Company.

(55) That said five large chain store organizations do approximately four times as much business per dollar of fixed property as is done by said defendants, and the said Great Atlantic & Pacific Tea Company does approximately

eight times as much business per dollar of fixed property [fol. 289] as is done by said defendants; that approximately two per cent of the capital of said five chain store organizations represents borrowed money, whereas approximately 30 per cent of the money invested in the business of said defendants represents borrowed money; that according to the published balance sheet of the Great Atlantic & Pacific Tea Company for the year 1929 it had cash on hand to the extent of $22,876,396 and securities of a value of $9,058,421, whereas the balance sheet for Armour and Company for 1929 shows cash on hand to the extent of $10,742,163.24 and that the company does not own any substantial amount of securities other than its investments in subsidiary corporations.

(56) That the large chain store organizations are in a liquid and strong financial position and do business upon a very profitable basis; that in view of the large number of chain store organizations engaged in the sale of food products in the United States and the great financial worth of such concerns, the allegation of the petition in this cause that the defendants to this suit will control "the quantity and price of each article of food found on the American table" unless restrained from engaging in the business of selling unrelated commodities, is untrue and not founded on fact at the present time.

The Wholesale Grocers

(57) That the wholesale grocery business of the United States is of such volume and extent and is handled by so many widely distributed concerns that there does not exist at the present time any actual or potential danger of a monopolization of such business by any corporation or group of corporations; that there are at the present time more than six thousand wholesale grocers located in approximately twenty-three hundred different cities in the [fol. 290] United States, and such wholesale grocers do an estimated business of approximately $4,000,000,000 per year.

(58) That the injury caused to the business of the wholesale grocer by the development of the chain stores and the trend toward integration and the elimination of the whole-

saler, has been counteracted by the wholesale grocers by means of the voluntary chain organizations hereinbefore referred to and by the invasion of the manufacturing field by such wholesale grocers; that in addition to said voluntary chains, many single wholesale grocers throughout the United States own or control at the present time retail grocery and food stores; that your petitioners are informed and believe, and upon such information and belief charge the fact to be, that since the entry of the decree in this cause many wholesale grocers in the United States have begun to handle and are now handling meats and packing-house products both for sale at wholesale and at retail stores owned by such wholesale grocers or controlled by them through the medium of voluntary chains or otherwise.

(59) That practically all of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names and merchandise a large percentage of their products under their own private brands; that such brands and trade names cannot lawfully be appropriated or imitated by others and products so sold under particular brands are not susceptible of monopoly by others; that the buying public has been induced, by means of national and local advertising, to make a practice of buying particular brands of food products and this practice has become so firmly imbedded in the minds of buyers that they refuse as a general rule to purchase brands not familiar to them even if offered at a reduced price.

[fol. 291] (60) That the defendants to this suit have suffered substantial losses in business during recent years because of the development of chain store organizations and the trend toward integration and that if the restrictions imposed by the decree of 1920 were removed the defendants could counteract such losses by utilizing unused distributing and sales facilities in merchandising grocery products; that the interveners in this cause and other wholesale grocers oppose the removal of such restrictions ostensibly on the ground that the transportation facilities arising from the ownership of refrigerator cars by the defendants would give them an unfair competitive advantage over the wholesale grocers; that as hereinbefore al-

leged refrigerator cars owned by packers who are not defendants to this suit are utilized for the transportation of such unrelated commodities and the Interstate Commerce Commission has held and determined since the decree of 1920 that the action of railroad companies in permitting such use of refrigerator cars by packers does not constitute an undue or unlawful prejudice to the wholesale grocer; that if any such prejudice existed when the decree in this cause was entered in 1920, such prejudice does not exist to-day because of the extensive building of hard roads and the development and perfection of motor trucks since the entry of the decree; that the business of wholesale grocers is confined to comparatively small districts and their products are particularly adapted to motor truck transportation and many wholesale grocers at the present time utilize motor trucks principally and some of them almost exclusively for the transportation of their products.

(61) That it is true that the development of the chain store and the modern trend toward integration has injuriously affected the business of the wholesale grocer but it has also injuriously affected the business of said [fol. 292] defendants; that the wholesale grocers are free to adopt methods and measures to counteract the effect of modern methods and conditions, but deny that the defendants to this suit, consisting of four packers among all of the innumerable packers of the United States, should have the right to adopt similar methods and measures to preserve and protect their own business; that the trend toward integration may in the future develop to such an extent that the wholesale grocer will be entirely eliminated as a separate and distinct factor in the merchandising system, but if such an event occurs it will not be due to the existence of a monopoly in the food industry, but to the operation of economic forces wholly beyond the scope of antitrust statutes; that if such an extensive development of the trend toward integration occurs, the wholesale grocer will disappear as a separate merchandising factor, but his property and business will be protected and preserved by engaging in the manufacturing and retail business, whereas the same development will render obsolete the vast branch house systems of the defendants to this suit and may bring about their financial destruction unless they are permitted to counteract modern tendencies

by engaging in the business of selling unrelated commodities and meats at retail; that it is inequitable to permit the wholesale grocer to intervene in an equitable action for the purpose of maintaining that competition must be restricted and restrained in the wholesale grocery field by means of a court decree even though it may result in the financial destruction of the national packers because of their inability to counteract recent economic forces by means and methods which the wholesale grocers themselves are employing.

[fol. 293] The Character of the Defendants' Business and the Function of the National Packer

(62) That the defendants to this suit are engaged principally in the business of manufacturing, distributing, and selling fresh meat and packing-house products; that Armour and Company owns and operates 19 packing plants located in the middle western states, and owns and operates 382 branch houses located in the principal cities of the United States; that the basic raw material of the packing industry is live stock which is produced on approximately 6,000,000 farms in the United States and on the western ranges; that approximately two-thirds of the live stock in the United States is produced west of the Mississippi river, whereas approximately two-thirds of the inhabitants of the United States reside east of the Mississippi river; that large or national packers having wide distributing facilities are essential to convert the surplus live stock of the agricultural areas into meats and distribute the same to the densely populated non-producing sections; that the large or national packer is also essential to perform the function or storing and carrying over supplies from seasons of surplus production to seasons of excess consumption; that the performance of such functions by the national packer requires large and scattered investments in packing plants, branch houses, refrigerator cars, and coolers; that the live stock producers of the nation are vitally interested in the continued existence and successful operations of national packers for the reason among others that anything which impairs their financial strength and competitive ability reacts unfavorably upon the prices obtainable for live stock; that during the year 1929 Armour and Company paid in cash on the dates of purchase

the sum of $643,000,000 for live stock and dairy products, and the producers of live stock in the United States are vitally interested in the preservation of the financial [fol. 294] strength and competitive power of a concern which afford a cash outlet for such an amount of live stock, and with substantial unanimity are actively in favor of the removal of the burdensome restrictions placed upon the defendants by the decree of February 27, 1920.

The Public Interest

(63) That the extent to which the public interest is involved in a modification of the decree of February 27, 1920, is convincingly disclosed by the attitude of the innumerable farmer and live stock producers associations in the United States; that in 1929, at the request of the Attorney General, the Secretary of Agriculture held public hearings on the question of the advisability of a modification of the decree of February 27, 1920; that at said hearings many officials and representatives of farm and live stock organizations appeared and testified in favor of modification of the decree as a measure essential to their welfare, and such evidence was overwhelming.

(64) That the attitude of the farmers and live stock producers of the nation is further shown by resolutions adopted by the American Farm Bureau Federation, The American National Live Stock Association, National Wool Growers Association, American Farm Congress, Arizona Cattle Growers Association, Arizona Wool Growers Association, California Cattle Mens Association, Colorado Stock Growers Association, Idaho Wool Growers Association, Kansas Live Stock Association, Missouri Live Stock Association, Montana Stock Growers Association, Montana Wool Growers Association, Cattle & Horse Raisers Association of Oregon, Nebraska Stock Growers Association, Oregon Wool [fol. 295] Growers Association, Texas and Southwestern Cattle Raisers Association, Sheep & Goat Raisers Association of Texas, Utah Horse and Cattle Growers Association, Utah Wool Growers Association, Washington Wool Growers Association, Western Marketing Association, Wyoming Stock Growers Association, Wyoming Wool Growers Association, California Wool Growers Association, Western

South Dakota Stock Growers Association, Idaho Horse and Cattle Raisers Association, Southern Livestock Association, Nevada Land and Livestock Association, Nevada State Farm Bureau Federation, Colorado-Nebraska Lamb Feeders Association, New Mexico Stock Growers Association, Interstate Organization of Meat Producers, Ohio Cooperative Livestock Association, Ohio Woolgrowers Cooperative Association and Ohio State Farm Bureau Federation; that said resolutions are 53 in number, and all favor modification of the decree of February 27, 1920.

(65) That under present marketing conditions and methods the decree of February 27, 1920 is also against the interests of the consuming public, because the entry of the defendants into the business of handling the unrelated commodities and of selling meats and meat food products at retail would operate to reduce the distributing and selling costs of the defendants and would increase competition in both the wholesale and retail fields and thus tend to bring about a reduction in prices to the public.

(66) That the requested modification of the decree of February 27, 1920, is favored by an overwhelming majority of farmers and live stock producers, packers who are competitors of the defendants, commission men, traders, speculators, order buyers, market reporters and others closely connected with the selling of live stock, and by an [fol. 296] overwhelming majority of numerous economists in the United States who have made a study of the decree and its effect under present marketing conditions; that your petitioners are informed and believe and upon such information and belief state the fact to be, that the requested modification of said decree of 1920 is also favored by an overwhelming majority of the general public and that the requested modification of said decree of 1920 is not opposed by any substantial part of the concerns engaged in any industry in the United States, with the sole exception of the wholesale grocers who opposed the modification because of a purely selfish interest and desire to restrict and limit competition in the particular business in which they are engaged.

The Injury Resulting to the Defendants under Present Marketing Conditions Because of Certain Restrictions Contained in the Decree of February 27, 1920

(67) That because of the extensive development of regular chain store organizations and voluntary chain store organizations, the purchasing power for retail meat distribution is rapidly becoming concentrated into a relatively small number of buyers; that centralized buying by large chain store organizations has substantially reduced the volume of business which otherwise would have been done by the defendants' branch houses and such volume of business has been further reduced because the volume of independent dealers has been curtailed by the development of the chain store; that the defendants' branch houses have capacities sufficient or more than sufficient to supply the requirements which were in existence at the time the branches were established; that though the volume has decreased because of modern merchandising methods, the overhead [fol. 297] incurred in the maintenance of branch houses remains the same or has increased; that selling is more difficult than before and the same staff of salesmen must be maintained; that the addition of so-called unrelated lines of food products would enable the same salesmen to obtain an increased volume of business for such branch houses and thus counteract the volume lost because of the development of the chain store.

(68) That because of a loss in the volume of branch house business, Armour and Company has been compelled to close and discontinue numerous branch houses during the past few years; that as an illustration, your petitioners refer to two Armour branch houses formerly located at Marlboro, Massachusetts, twenty-five miles from Boston; that a number of chain stores are located in this community and such local stores normally would have purchased a substantial part of their requirements from the Armour branches in Marlboro, but modern merchandising methods have resulted in such local chain stores being supplied with meats by motor truck distribution from the Boston warehouse of the chain store organizations; that Armour and Company was compelled to discontinue the operation of one Marlboro branch house on January 22, 1927 and the other on

January 26, 1929, whereas they could have been continued had Armour and Company been permitted to counteract the loss of volume by handling unrelated lines.

(69) That a further loss of volume in the business of said defendants has resulted from the practice of chain stores to handle their own brands of meat products either partially or exclusively; that such products bearing the private brands of chain stores are manufactured either at factories owned and operated by the chain organizations or under contract by outside packers; that either practice is prejudicial to the defendants because the manufacture [fol. 298] of branded goods at the factories owned by the chain store organizations means a complete loss of the business and when manufactured under contract by an outside packer under the private label or brand of the chain store organization, the outside packer is placed in a position in which the maintenance of that volume of business is dependent upon the renewal of manufacturing contracts at prices offered by the chain store organization.

(70) That when meats and meat food products are sold by the defendants to chain store organizations, large quantities are usually required by the centralized buyers representing the chains; that the products sold are highly perishable and when a chain store buyer fails to take his normal quantity, the defendants are suddenly confronted with the task of finding a new and immediate outlet before deterioration sets in and such forced sales are inevitably attended by heavy losses; that in order to avoid such situations, the defendants frequently reduce their prices to the chain buyers below prevailing market prices, with the result that they make no profit at all or an exceedingly small profit and that this situation is reflected throughout both the meat producing and live stock industries; that this condition could be avoided if the defendants were permitted to establish and maintain their own retail stores and thus provide a satisfactory outlet for perishable products.

(71) That the merger of non-defendant meat packers with chain store organizations has injured and in the future will injure the defendants, because under conditions prevailing in 1920, a part of the meat food products sold to consumers by such chain store organizations would have been purchased from these defendants; that whenever a

chain store organization engages in the operation of a [fol. 299] packing plant, that business is permanently and completely removed from the competitive field and no part of it can possibly be obtained by the defendants, whereas if the defendants were permitted to operate retail food stores, they would normally acquire a part of such business through sales directly to consumers.

(72) That in the struggle to maintain a normal volume of branch house business under present day conditions, from the sale of meat products exclusively, your petitioners are obliged frequently to reduce selling prices to a level not warranted by manufacturing costs and branch house expense and thus maintain volume of business but only at the cost of selling merchandise on an unprofitable basis.

(73) That the decree of February 27, 1920 not only prohibits the defendants from establishing retail outlets for their own products, but also denies to them the right to handle a diversified line of products in accordance with modern trends in merchandising; that the retail stores handling meat exclusively are rapidly decreasing in number and the chain store organizations and independent dealers as well are developing the modern food store with a diversified line of products; that food manufacturers other than the defendants to this suit have adapted themselves to this changed condition and are handling diversified lines so as to be in a position to obtain the business of the chain food store; that a wide distribution of diversified products results in increased sales volume and a reduction in selling expense; that one salesman can take orders for a variety of food products as well as meat exclusively; that the handling of a diversified line of products also results in a reduction of delivery costs; that these savings enable manufacturing companies handling diversified lines to lower prices both to independent retailers and to chain store buyers.

[fol. 300] (74) That because of this modern tendency toward diversified lines and general food stores, the removal of the restriction of the decree of February 27, 1920 regarding the maintenance of retail meat markets would not be effective to relieve the defendants from their present prejudiced position unless corresponding modifications are

also granted as to paragraphs 3rd, 4th and 5th of the consent decree which relate to the commodities known as unrelated lines.

(75) That under present conditions the decree of February 27, 1920 is inequitable, and unnecessarily prejudicial to the defendants because it denies to the defendants the right to engage in the lawful business of handling the unrelated lines and selling meats at retail, but does not impose like restrictions on hundreds of other packers who are competitors of the defendants and who are in as favorable or in a more favorable position than are said defendants; because it denies to the defendants the right to sell meats at retail but does not deny to chain store organizations operating retail meat markets the right to engage in the packing business; because it denies to the defendants the right to handle a diversified line of products and thus reduce selling and distribution costs; and because it denies to the defendants the right to protect their business and prevent operating losses by following new and radical and nationwide changes in marketing and distribution methods.

(76) That under prevailing conditions the decree of February 27, 1920, is against the public interest, because under the conditions now existing it restrains competition, contrary to the principles of the Sherman antitrust act; because it prevents the defendants from adopting measures which would reduce their selling and distributing costs and thus enable them to sell commodities at a lower price; [fol. 301] because it has forced the defendants and will in the future force the defendants to close and discontinue branch houses to the serious detriment of the consuming public and the independent retailer, who must have a dependable source of supply for packing-house products, and said decree of 1920 is further injurious to both defendants herein and the public interest, in that its burdensome restrictions under modern merchandising conditions may bring about the financial destruction of the vital and essential national packers.

Prayer for Relief

Wherefore your petitioners pray that the court will construe, modify and amend its said decree entered on

February 27, 1920, by dismissing this suit as to the defendant, Armour & Company, a Texas corporation, the Colorado Packing & Provision Company, a Colorado corporation, and Frederick W. Croll; and by modifying paragraphs Second, Third, Fourth, Fifth, Sixth, Tenth, Twelfth and Thirteenth of said decree, under such terms and conditions as the court shall direct so as to enable these defendants (1) to own and operate retail meat markets; (2) to own stock in stockyards companies and terminal railroads; (3) to manufacture, sell and deal in commodities hereinbefore referred to as unrelated lines and specified in paragraph fourth of said decree, and to use or permit others to use the distributive facilities of said defendants in handling said unrelated lines, and that your petitioners be granted such further and additional relief as the facts heretofore alleged may require and the court may deem just and proper.

Conrad H. Syme, Charles J. Faulkner, Jr., Nelson T. Hartson, Frank J. Hogan, Attorneys for Petitioners.

[fol. 302] *Duly sworn to by Edward L. Lalumier. Jurat omitted in printing.*

[fol. 303] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF INTERVENERS TO DISMISS PETITION OF SWIFT & COMPANY ET AL. AND IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF—Filed April 12, 1930

Now comes the interveners, American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and on the records, plead-

ings and files in said cause move the Court to dismiss the petition of defendant, Swift & Company and others, for modification of the consent decree of February 27, 1920, upon the following grounds, to-wit:

1

That it appears on the face of said petition by said defendants that they are not entitled, nor is either of them entitled, to the relief prayed for therein, nor to any relief arising from the facts alleged in said petition.

[fol. 304]

2

That it appears on the face of said petition that this Court, having heretofore entered a final decree herein and the time having expired for a review thereof and the Supreme Court of the United States having held its said decree is final and valid, has no jurisdiction to hear and determine this petition.

3

It appearing on the face of said petition that the decree sought to be modified was rendered by consent, that more than nine (9) years have expired since the entry of such decree and the consents thereto, and that the Supreme Court of the United States and this Court have held that such consent decree is valid, this Court has no jurisdiction of the subject-matter of the petition and no jurisdiction to modify or in any wise affect said decree.

4

That it appears on the face of said petition that said petition is wholly without equity.

5

For special motion to strike portions of said petition, interveners above move to strike from said petition the following:

(a) Paragraph VIII, sub-paragraphs 1 to 4, are irrelevant and impertinent and pleads no facts relevant to any issue in this case.

(b) Paragraph XIII, sub-paragraph 1, is irrelevant and impertinent and plead no facts relevant to any issue in this case.

[fol. 305] Wherefore, and for divers other good reasons of objection appearing on the face of the petition, these interveners pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said petition, and they humbly pray that said petition be dismissed, with reasonable costs to interveners in their behalf sustained.

Points for Argument

(a) A valid final judgment cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said judgment.

(b) A valid consent decree cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said consent decree.

(c) The petition sets up no equity.

(d) The specific parts of the petition are irrelevant and impertinent.

(Signed) Edgar Watkins, (Signed) Huston Thompson, Solicitors for Interveners. —— ——, Solicitors.

April 12th, 1930.

Service of copy of above Motion of Interveners hereby acknowledged.

(Signed) H. B. Teegarden, Solicitor for Plaintiff, Special Asst. to the Atty. General. (Signed) Chas. A. Douglas, Henry Veeder, (Signed) Nelson T. Hartson, Frank J. Hogan, Solicitors for Defendants.

[fol. 306] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS PETITION OF ARMOUR & COMPANY ET AL. AND IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF—Filed April 12, 1930

Now comes the interveners, American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and on the records, pleadings, and files in said cause move the Court to dismiss the petition of defendant Armour & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds, to-wit:

1

That it appears on the face of said petition by said defendants that they are not entitled, nor is either of them entitled, to the relief prayed for therein, nor to any relief arising from the facts alleged in said petition.

[fol. 307]

2

That it appears on the face of said petition that this Court, having heretofore entered a final decree herein and the time having expired for a review thereof and the Supreme Court of the United States having held its said decree is final and valid, has no jurisdiction to hear and determine this petition.

3

It appearing on the face of said petition that the decree sought to be modified was rendered by consent, that more than nine (9) years have expired since the entry of such decree and the consents thereto, and that the Supreme Court of the United States and this Court have held that such consent decree is valid, this Court has no jurisdiction of the

subject-matter of the petition and no jurisdiction to modify or in any wise affect said decree.

4

That it appears on the face of said petition that said petition is wholly without equity.

5

For special motion to strike portions of said petition, interveners above move to strike from said petition the following:

(a) Paragraph (27) wherein it is claimed that the intervener American Wholesale Grocers Association could not have obtained the consent decree, above described, in its own name, because such paragraph is in conflict with the judgment of this Court rendered more than nine (9) years next prior to the filing of the petition of Armour & Company et al.

[fol. 308] (b) The allegations in paragraphs (63) and (64) of said petition of Armour & Company et al., are irrelevant and impertinent and set up no relevant or pertinent facts.

Wherefore, and for divers other good reasons of objection appearing on the face of the petition, these interveners pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said petition, and they humbly pray that said petition be dismissed, with reasonable costs to interveners in their behalf sustained.

Points for Argument

(a) A valid final judgment cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said judgment.

(b) A valid consent decree cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said consent decree.

(c) The petition sets up no equity.

(d) The specific parts of the petition are irrelevant and impertinent.

Edgar Watkins, Huston Thompson, Solicitors for Interveners. —— ——, Solicitors.

April 12", 1930.

Service of copy of above Motion of Interveners hereby acknowledged.

H. B. Geegarden, Solicitor for Plaintiff, Special Asst. to the Attny. General. Conrad Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, Solicitors for Defendants.

[fol. 309] In Supreme Court of the District of Columbia

[Title omitted]

Motion in Behalf of the Intervenor National Wholesale Grocers Association of the United States to Dismiss Amended Petition of Swift & Company et al.—Filed April 12, 1930

Comes now National Wholesale Grocers Association of the United States, intervenor herein, and moves the court to dismiss the amended petition of defendant, Swift & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds:

1. That said amended petition does not state facts sufficient to entitle said defendants to the relief prayed for in said amended petition, or to any relief whatsoever.

2. That said amended petition fails to show that all of the parties to said consent decree have given their consent to any modification thereof and, consequently, the court is without power to make a new agreement for the parties by granting the modification prayed for in said amended petition or any other material modification of the terms of said consent decree.

3. The court is without jurisdiction to grant said amended petition or to make any order or decree with respect thereto except to dismiss the same.

Wherefore this intervenor prays that said defendants take nothing by virtue of said amended petition, but that the same be dismissed.

William C. Breed, Frank K. Nebeker, Attorneys for Intervenor National Wholesale Grocers Association of the United States.

Service of a copy of the within motion acknowledged this 12th day of April, 1930.

Chas. A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, Attorneys for Defendants.

[fol. 310] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION IN BEHALF OF THE INTERVENOR NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES TO DISMISS AMENDED PETITION OF ARMOUR & COMPANY ET AL.—Filed April 12, 1930

Comes now National Wholesale Grocers Association of the United States, intervenor herein, and moves the court to dismiss the amended petition of defendant, Armour & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds:

1. That said amended petition does not state facts sufficient to entitle said defendants to the relief prayed for in said amended petition, or to any relief whatsoever.

2. That said amended petition fails to show that all of the parties to said consent decree have given their consent to any modification thereof and, consequently, the court is without power to make a new agreement for the parties by granting the modification prayed for in said amended petition or any other material modification of the terms of the consent decree.

3. The court is without jurisdiction to grant said amended petition or to make any order or decree with respect thereto except to dismiss the same.

Wherefore this intervenor prays that said defendants take nothing by virtue of said amended petition, but that the same be dismissed.

William C. Breed, Frank K. Nebeker, Attorneys for Intervenor National Wholesale Grocers Association of the United States.

Service of a copy of the within motion acknowledged this 12th day of April, 1930.

Conrad H. Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, Attorneys for Defendants.

[fol. 311] In Supreme Court of District of Columbia

Opinion of Court on Motion to Dismiss Amended Petitions—Filed June 28, 1930

The American Wholesale Grocers Association and other intervenors in this case have moved to dismiss the amended petitions of Swift & Co., et al., and Armour & Co., et al., which seek certain modifications and amendments of the consent decree of February 27, 1920, based upon certain subsequent economic and financial developments. The grounds of these motions are in substance that the court is without power or jurisdiction to modify or amend a final decree entered more than nine years ago, and in particular has no power or jurisdiction to modify or amend a consent decree, and finally that the facts stated in the amended petitions are insufficient to justify the court in modifying the consent decree even if the court had the power. The United States has not moved to dismiss these amended petitions and does not raise any question of the power of the court to grant the relief prayed, but has answered in the following language:

"Comes now the United States of America and for answer to the amended petition for modification of the consent decree of 1920 hereinbefore filed by Swift & Co., et al., April 2, 1930, says, that so far as the matters set forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claims for relief, the United States is without sufficient knowledge of

said matters to form a belief, and therefore denies the same and challenges the defendants to strict proof thereof."

Mr. Justice Stafford, in his opinion upon the question of the right of the interveners to be made parties in this [fol. 312] case, said:

"Without deciding that the petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petitions it is fair and just that they should be allowed to intervene, not to take control of plaintiff's side of the proceedings but for the limited purpose stated in their petitions; namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it." etc.

In the order permitting the intervention in this case it is stated that, "leave to intervene herein is granted • • • to be heard in opposition to any proposed changes in the consent decree which would deprive the interveners of the protection now afforded by said decree."

The consent decree itself provides, "that jurisdiction of this case be, and is hereby retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree, and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

Both the consent decree and the order permitting intervention evidently contemplated that modifications may thereafter be made in the consent decree by order of the court, although the nature and extent of these modifications are not defined, nor whether modifications may be made without the consent of the original parties to the decree. But in my opinion it is not necessary at the present time to [fol. 313] decide upon the power of the court to modify the consent decree without the consent of the parties to it. If after a full hearing the Government should become convinced that the decree should in justice to the defendants be modified, and should consent to the modification, the refusal of the interveners to consent would not in itself prevent the court from modifying the consent decree if the court should take the same view as the Government upon the facts presented to it. The interveners will, of course, have the right "to be heard in opposition to any proposed

change in the consent decree which would deprive them of the protection now afforded by said decree", but they are not entitled "to take control of the plaintiff's side of the proceedings."

As to the sufficiency of the facts stated in the amended petition for modification they involve questions of such economic and financial complexity that their effect can be determined with much more certainty after a full hearing on the merits, and the final determination by the court may largely depend upon whether after such hearing the Government will consent to or oppose the proposed modifications.

For these reasons the motions to dismiss the amended petitions of Swift & Co., et al., and Armour & Co., et al., will be overruled.

Jennings Bailey.

[fol. 314] IN SUPREME COURT OF DISTRICT OF COLUMBIA

[Title omitted]

ORDER OVERRULING MOTIONS TO DISMISS THE AMENDED PETITIONS OF ARMOUR & COMPANY AND SWIFT & COMPANY AND OTHERS—Filed July 3, 1930.

This cause duly came on to be heard at this term of the court on the motions of the National Wholesale Grocers Association of the United States and the American Wholesale Grocers Association, and others, interveners herein, to dismiss the amended petitions of the defendants Armour & Company and Swift & Company and others, for modification of the Consent Decree of February 27, 1920, and after argument by counsel for the respective parties and interveners, and after consideration by the court, it is, this 3d day of July, 1930, hereby—

Ordered, that the said motions be and the same are hereby severally overruled, with leave to the interveners, the National Wholesale Grocers Association of the United States and the American Wholesale Grocers Association, to answer the said amended petitions on the merits within twenty (20) days from this date. To all of which interveners except and in open court pray that their exceptions be allowed, and it is so ordered.

By the Court:

Justice Bailey, Associate Justice.

We have no objection to the form of the above order. H. B. Teegarden, Special Assist. to the Attny. General, Attorneys for the United States of America. Frank K. Nebeker, Attorney for National Wholesale Grocers Association of the United States. Edgar Watkins, Mac Asbill, Attorneys for American Wholesale Grocers Association.

[fol. 315] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

CONSENT OF NEW ENGLAND DRESSED MEAT AND WOOL COMPANY AND OTHERS TO MODIFICATION OF DECREE—Filed April 18, 1930.

Come now New England Dressed Meat and Wool Company, North Packing and Provision Company, The Sperry & Barnes Company, John P. Squire & Company, (Maine), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey & Dexter Company, Western Meat Company, Oakland Meat & Packing Company, and Nevada Packing Company, corporations, defendants in the above-entitled cause, and consent to the modifications of the decree entered in this cause on the 27th day of February, 1920, as prayed in the amended petitions filed in this cause by Armour & Company and others and by Swift and Company and others, defendants in this cause.

Henry Veeder, Counsel for New England Dressed Meat and Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Maine), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey & Dexter Company, Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, 33 South Clark Street, Chicago, Illinois.

Dated —— —, ——.

[fol. 316] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER BY THE UNITED STATES TO THE AMENDED PETITION OF SWIFT & COMPANY ET AL. FOR MODIFICATION OF THE CONSENT DECREE OF 1920—Filed April 12, 1930

Comes now the United States of America, and for answer to the amended petition for modificaton of the Consent Decree of 1920 hereinbefore filed by Swift & Company, et al., April 2, 1930, says that so far as the matters set forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claim for relief, the United States is without sufficient knowledge of said matters to form a belief, and therefore denies the same and challenges the defendants to the strict proof thereof.

John Lord O'Brian, The Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing answer is hereby acknowledged this 12th day of April, 1930.

Chas. A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, N. T. H., Counsel for Petitioner.

[fol. 317] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER BY THE UNITED STATES TO THE AMENDED PETITION OF ARMOUR & COMPANY ET AL. FOR MODIFICATION OF THE CONSENT DECREE OF 1920—Filed April 12, 1930.

Comes now the United States of America, and for answer to the amended petition for modification of the Consent Decree of 1920 hereinbefore filed by Armour & Company, et al., April 2, 1930, says that so far as the matters set

forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claim for relief, the United States is without sufficient knowledge of said matters to form a belief, and therefore denies the same and challenges the defendants to the strict proof thereof.

John Lord O'Brian, The Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing answer is hereby acknowledged this 12th day of April, 1930.

Conrad Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, N. T. H., Counsel for Petitioner.

[fol. 318] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF AMERICAN WHOLESALE GROCERS' ASSOCIATION ET AL. TO THE AMENDED PETITION TO MODIFY OF SWIFT & COMPANY ET AL.—Filed July 3, 1930

Come now American Wholesale Grocers' Association, and the persons, firms, and corporations joining in the intervention filed in this cause September 10, 1921 and without waiving their motion, general and special, to dismiss the petition of Swift & Company and those joining with it in its amended petition to modify but insisting on said motion and contending that this court is without jurisdiction of said petition, and insisting that said petition shows no equitable reason for the relief prayed or any part thereof, and reiterating the special grounds of their motion directed to impertinencies in said petitions, respectfully say:

1. For convenience the interveners answering herein will be called Interveners, and Swift & Company and those joining with it in its petition to modify will be called the Swift Defendants.

2. The Swift Defendants herein should not be permitted to maintain this petition for that they are estopped under the facts in this case from so doing.

Said Swift Defendants for good and valuable considerations voluntarily agreed to the Decree of February 27, 1920, entered in this court and have received such con- [fol. 319] siderations, among others the following:

(a) Prior to the entry of said consent decree, and to the knowledge of the Swift Defendants, the Federal Trade Commission and special counsel employed by the Department of Justice had, after hearings and study, concluded and reported that said defendants were in violation of the Anti-Trust laws of the United States; that the Attorney General of the United States then in office had by presenting witnesses to the Grand Jury in the United States District Court at Chicago, Ill., and in proposing the same course in New York, N. Y., sought and was seeking criminal indictments against said defendants; that said Attorney General was preparing to file suits in equity against said defendants to enjoin the continuation of said violations and to dissolve the said corporate defendants and to have appointed a receiver or receivers for all their assets used in such violations; and that because of the contract for a consent decree offered and made by said defendants, such criminal prosecutions and such equity suits were all discontinued on and after the contract for said consent decree was made, and now and when the petition of defendants was filed, rights of action, both criminal and civil for the offenses then involved are and were barred by the statutes of limitation.

(b) Because as a result of the entry of said decree of February 27, 1920, said Swift defendants were enabled to and did intervene in that certain proceedings then pending before the Interstate Commerce Commission entitled—Southern Wholesale Grocers' Association vs. certain railroads therein named, and that certain other proceedings entitled National Wholesale Grocers' Association vs. certain railroads therein named and other persons therein named, and did by intervention plead as an answer to the [fol. 320] complaints therein and to the allegations that said Swift defendants enjoyed unlawful privileges in rates, rules and practices, that the said consent decree had terminated the competition between wholesale grocers and said Swift defendants, and that by reason of said decree complainants in said complaints before the Interstate Com-

merce Commission were not entitled to any relief, and because of such decree so pleaded by said Swift defendants substantial relief on said complaints was denied by the Interstate Commerce Commission to the advantage of said Swift defendants and said Commission in its report reported in Vol. 62 I. C. C. Reports, at page 375 thereof, sustained in whole or in part said contentions of the Swift defendants.

(c) Because by reason of the entry of said consent decree the Congress of the United States refrained from passing more stringent regulatory laws than would otherwise have been passed and in the enactment of the Packers' and Stockyards' Act of 1921 gave force and effect to said consent decree by making said act less inclusive than it otherwise would have been.

(d) That Interveners here could have, prior to the entry of said consent decree, filed in their own name and behalf suits at law and equity to enforce against said Swift defendants their rights for special injuries caused by the violation by said defendants of the Anti-Trust laws aforesaid, all of which rights interveners abandoned because of the entry of said decree and such rights are now and were when the Petition to Modify herein was filed, barred by the statutes of limitation.

For each and all of the foregoing reasons said Swift defendants having knowingly obtained the advantages and considerations aforesaid, are estopped from prosecuting any efforts or proceedings, especially the efforts set up in their amended petition, now before the court, to modify [fol. 321] the consent decree.

3. That said Swift defendants do not come into this court of equity with clean hands but have so conducted themselves as not to entitle them to any relief in a court of equity, said defendants being now and at all times since the entry of said decree of February 27, 1920 in violation thereof, and especially in the following particulars, to-wit: That said Swift defendants have continued to purchase the items referred to in paragraphs 4 and 5 of said consent decree and have not complied with the orders of this Court in that they have by purchase and otherwise put themselves in a position where it will be more difficult for them

to comply with the decree if and when the provisional modification now in force is terminated; that said Swift defendants in pursuance of their unlawful practices have continued to demand and receive from the carriers, especially the carriers in western trunk line territory preference in the rates, rules, and practices of such carriers and are now receiving rate adjustments from such carriers that are unreasonable and unjust and, as interveners are informed and believe, are in violation of the law in that in conflict with the applicable tariffs they are receiving rates on packer or peddler cars on shipments of less than the minimum weight required in such tariffs; that said Swift defendants are further openly and contemptuously in violation of the decree herein and the Anti-Trust laws of the United States in that as interveners are informed and believe they are through a corporaton known as the Mechanical Manufacturing Company owned by said defendants or at least controlled by them, exerting the influence of a large shipper by seeking to coerce and compel carriers to purchase the products of said Company, thereby carrying out their continuing plan of obtaining for themselves special privileges and advantages. For each and all of said reasons said Swift & Company, defendants, are not [fol. 322] entitled to maintain this suit and relief should be denied them.

4. In the amended petitions herein of said Swift defendants there is such an intermixture of prophesy, opinions and conclusions with a small proportion of facts that an answer thereto is difficult and these interveners deny each and every of the allegations of fact, conclusions, opinions, and prophesy contained in said petitions, unless hereinafter specifically admitted.

5. Referring in detail to the amended petitions of said Swift defendants and to the preliminary paragraphs thereof in which it is alleged that there have been radical and revolutionary changes since the entrance of the consent decree in economic conditions, merchandising methods, etc., these interveners deny the same as alleged and say that such changes, if any there be, have been a natural and orderly economic development differing if at all only in degree from changes prior to 1920, and in no way do such changes, if any, affect the question involved in the bill of complaint

of the United States herein on which said consent decree was entered.

6. Answering sub-paragraph 1 of paragraph I of said Swift & Company defendants, the same is denied.

7. Answering sub-paragraph 2 of said paragraph I, the same is denied, except as to the allegations relating to the practices of manufactures entering into retail outlets and retailers entering into manufacturing fields as to which and as to the extent of which interveners being without information can neither admit nor deny the same but demand strict proof thereof.

8. Answering sub-paragraphs 3 and 4 of paragraph I, these interveners say that the allegations therein are irrelevant to the issues herein, but should they be held to be relevant in any way, there is presented but a question of [fol. 323] opinion as to which these interveners are without information and can, therefore, neither admit nor deny same but demand strict proof, should it be held that said paragraphs are material.

9. Answering sub-paragraph 5 of paragraph I, interveners say that as to all the allegations thereof except the last three lines, they have no accurate information and can therefore neither admit nor deny the same and demand strict proof thereof. As to the last three lines the same are denied and if there is the use of brands as alleged the same existed at the time of the entry of the consent decree.

10. Answering sub-paragraphs 6, 7, 8, 9, and 10 of paragraph I, interveners submit that the allegations therein are wholly immaterial to the issues in this cause; but if the same should be held material, they being without information can neither admit nor deny the same and demand strict proof thereof.

11. Answering sub-paragraph 11 of paragraph I, interveners submit that isofar as same is claimed as a basis for affirmative relief it is immaterial to the issues in this cause but shows, as interveners submit, an intention upon the part of said Swift defendants themselves to enter into the practices described and further to increase their monopolistic powers and their tendency to restrain trade and commerce.

12. Answering sub-paragraph 12 of paragraph I, interveners say that while they desire changes that would promote a healthy competition they deny that the changes described in the petitions of Swift & Company will promote such competition and submit as to the other portions of said paragraph that the same are immaterial; but should they be held material interveners are without information and, therefore, can neither admit nor deny the same but demand strict proof thereof.

13. Answering sub-paragraphs 1 and 2 of paragraph II, [fol. 324] interveners say that for lack of information they can neither admit nor deny the specific allegations contained therein but demand strict proof thereof. They do admit that there has been some growth since 1920 in the extent of business in the chain stores and say that such growth was reasonably foreseeable by Swift & Company, defendants, at the time they agreed to the decree of February 27, 1920, and it is believed that there is nothing in such growth justifying changes in the decree as originally entered.

14. Answering sub-paragraph 3 of paragraph II, interveners being without information can neither admit nor deny the same, except as to the last seven lines thereof which they deny.

15. Answering sub-paragraph 4 of paragraph II, interveners deny that in 1920 the chain grocery stores sold practically no meats and deny that there is the serious danger claimed in the latter part of the paragraph and say that if the trend is as claimed in said paragraph that such trend would in no wise injure said Swift & Company defendants, and as to all other portions of paragraph 4 these interveners being without information can neither admit nor deny same but demand strict proof thereof.

16. Answering sub-paragraph 5 of paragraph II, interveners say that as to the allegations of new developments therein contained interveners are without accurate information and can therefore neither admit nor deny same but demand strict proof thereof, and the allegation of serious disadvantage and danger and the allegations following same are denied.

17. Answering sub-paragraph 6 of paragraph II, interveners deny the same and the conclusions sought to be drawn from said allegations are unsound.

18. Answering sub-paragraph 7 of paragraph II, interveners say that insofar, if at all, there is a trend toward [fol. 325] integration and the elimination of middlemen said Swift & Company defendants are and have been before and since the entry of the consent decree herein participants therein.

19. Answering sub-paragraph 8 of paragraph II, as to the allegations relating to the business and profits of the named Company therein, interveners being without information can neither admit nor deny the same but demand strict proof thereof, and specifically these interveners deny that said named businesses are conducted on a more profitable basis than Swift & Company defendants and submit that there is no legal propriety in comparing the two classes of business.

20. Answering sub-paragraph 9 of paragraph II, the same is denied and interveners submit that this allegation is in part in conflict with other allegations contained in sub-paragraph 12 of paragraph II.

21. Answering sub-paragraph 10 of paragraph II, the same is denied except it is admitted that chain stores do use leaders as a form of advertising but these interveners submit that such fact is immaterial to the issues herein and if true would in no wise injure the Swift & Company defendants.

22. Answering sub-paragraph 11 of paragraph II, interveners deny that the chain store systems work a special handicap on the Swift & Company defendants and submit that if said defendants permit themselves to sell goods to the chain stores at less price than they sell to others said defendants are themselves guilty of violating the Clayton Act and the consent decree.

23. Answering sub-paragraph 12 of paragraph II, interveners being without information as to the practices of Swift & Company defendants claiming to have been forced on them since 1920, can neither admit nor deny the same but if the same should be held material demand strict proof

thereof, and as to the relative cost of doing business these interveners have no information and therefore can neither [fol. 326] admit nor deny the same but demand strict proof thereof and call upon the defendants to produce such books and accounts as will enable interveners and the court accurately to know the facts.

24. Answering sub-paragraph 1 of paragraph III interveners say that as to the allegations of dealing in meats and meat products and livestock products and butter, cheese, eggs, and poultry, being without information they can neither admit nor deny the same but demand strict proof thereof. As to the allegations relating to the consent decree herein these interveners refer to said decree as an accurate statement thereof and deny there is anything in said Decree injurious to said Swift & Company defendants and submit that the restraint therein of said defendants is necessary and proper.

25. Answering sub-paragraph 2 of paragraph III, interveners submit that insofar as such paragraph indicates there is competition with the Swift & Company defendants there is indicated a healthy condition. As to the other allegations in said paragraph interveners being without information can neither admit nor deny same but demand strict proof thereof if they be deemed material.

26. Answering sub-paragraph 3 of paragraph III interveners say that they submit the allegations are immaterial, but if held to be material interveners being without information can neither admit nor deny the same but demand strict proof thereof.

27. Answering sub-paragraph 4 of paragraph III interveners deny that the conditions therein named have caused loss or embarrassment to said Swift & Company and submit that the rest of said paragraph is immaterial to any issue herein, but if the same should be held material interveners being without information can neither admit nor deny the same but demand strict proof thereof.

[fol. 327] 28. Answering sub-paragraph 1 of paragraph IV, interveners submit that if such allegations are true they show no reason for modification of the consent decree herein but merely a change in degree, and as to such allegations interveners being without accurate information can

neither admit nor deny the same but demand strict proof thereof, and the conclusions sought to be drawn from such allegations are denied.

29. Answering sub-paragraph 2 of paragraph IV, as to the prophesy therein contained of the merger of meat packers with grocery chains, these interveners being unable to look into the future cannot admit or deny the same, but on information and belief they believe and so allege that said Swift & Company do contemplate mergers with chain stores, such belief being based upon the statement of brokers in Chicago, published in the Congressional Record of May 22, 1930, Volume 72, No. 128, page 9712. Further answering said paragraph these interveners deny that said defendants will be injured as alleged therein and say that the decree is not unfair and unjust, but is just, fair, legal, and consented to by said defendants.

30. Answering sub-paragraph 3 of paragraph IV, interveners being without information can neither admit nor deny the same except they admit that some small packers handle groceries, a condition existing at and prior to February 27, 1920, but by far the greater number of small packers do not handle groceries.

31. Answering sub-paragraph 1 of paragraph V, interveners deny the last ten lines thereof and as to the rest of said paragraph these interveners being without information can neither admit nor deny the same. Interveners admit that there are a large number of wholesale grocers, perhaps not 6,000, but say that such wholesale grocers act independently and are customers of the defendants Swift & Company.

[fol. 328] 32. Answering sub-paragraphs 2, 3, 4, and 5 of paragraph V, interveners say that they are without information as to the allegations therein, and, therefore, can neither admit nor deny same but demand strict proof thereof and specifically these interveners say that wholesale grocers are independent of each other and in no way do or can restrain commerce and interveners specifically deny that wholesale grocers selfishly oppose any modification of the decree herein, and admit that they do vigorously oppose such modification because, as interveners submit, a modification would be destructive of competition and injurious to the public.

33. Answering sub-paragraph 6 of paragraph V, interveners being without information as to the extent of the use of the facilities of Swift & Company defendants, can neither admit nor deny the allegations with reference thereto. As to all the rest of the paragraph the same is denied.

34. Answering sub-paragraph 7 of paragraph V, interveners deny the same insofar as said paragraph alleges that said Swift & Company defendants have no unfair advantage and say that the proceedings referred to in said paragraph and the evidence therein show unfair preference and advantage conceded by interstate carriers to said defendants and that the decision of the Interstate Commerce Commission was rendered as alleged, solely because of the fact as these interveners are informed and believe that prior thereto this court had entered the consent decree herein.

35. Answering sub-paragraph 8 of paragraph V, interveners deny that most of the grocers merchandise grocery products under their own private labels and brands but admit that some grocers do, but say that this condition existed at and before February 27, 1920, and these interveners submit that the use of brands would not promote or prevent monopolization or restraint of trade. Swift & [fol. 329] Company defendants use and have for years prior to 1920 used special brands.

36. Answering sub-paragraph 9 of paragraph 7, interveners say that whatever the function of chain stores is or may be such stores furnish customers to the defendants Swift & Company and interveners are informed and believe that it is the purpose and intent of said defendants themselves to become owners of, or interested in, systems of chain stores, this information being based upon the statement of brokers in the publication in the Congressional Record hereinbefore referred to.

37. Answering sub-paragraph 10 of paragraph V, interveners submit the construction thereof to the court and insofar as said paragraph contains allegations other then construction of the decree interveners submit that such allegations are expressions of opinion or prophesy and interveners being without accurate information can neither admit nor deny same but demand strict proof thereof.

38. Answering sub-paragraph 11 of paragraph V, interveners deny the same and further submit that the elimination therein referred to tends to promote monopolization and restraint of trade.

39. Answering sub-paragraphs 1 to 8 inclusive of paragraph VI, interveners deny that defendants Swift & Company could not possibly constitute a danger of monopolization in the distribution of foods and deny that said defendants are at a disadvantage in any legitimate enterprise because of the consent decree and submit that without the consent decree, defendants would continue as they have for more than thirty years restraining trade and with tendencies toward monopolization, and that said defendants are not satisfied with the parity of their competitors but seek preferences. It is admitted that a diversified line of products tends to give to food manufacturers, as it gives [fol. 330] to the defendants herein, greatly strengthened bargaining power with those with whom they deal. As to all the rest of the allegations in the said paragraph interveners being without information can neither admit nor deny same but demand strict proof thereof.

40. Answering sub-paragraphs 1 to 4 inclusive of paragraph VII, as to the contents of the Decree and its effect interveners make reference to the decree itself, and as to other statements in said paragraph the same are denied.

41. Answering sub-paragraphs 1 to 4 inclusive of paragraph VIII, interveners admit that packers by means of their branch houses and car routes reach all sections of the country and provide a wide outlet for distributing their products, but say that by reason of their branch houses and car routes defendants have a preference and advantage over merchants engaged in distributing the unrelated commodities in the decree, an advantage which was sought to be prevented by said decree. Further these interveners deny that anything in the consent decree improperly or illegally reacts against the packers and as to the rest of said paragraphs interveners being without information can niether admit nor deny same but demand strict proof thereof. Interveners admit there was a hearing as stated in paragraph 4 at which differences of opinion were expressed by different witnesses.

42. Answering sub-paragraph 1 to 5 inclusive of paragraph IX, interveners deny loss to the said defendants as alleged, deny that the decree is unnecessary or oppressive, deny that it would be to the advantage of the farmer or consumer to have said decree set aside and as to the rest of the allegations if the court should hold them material, interveners being without information can neither admit nor deny same but demand strict proof thereof. As to [fol. 331] the statements concerning the decree these interveners ask leave to refer to the decree for a correct statement of what it contains and what it means.

43. These interveners answering all of paragraph X say they admit that certain reports were had and reference thereto is made for an accurate and complete statement of what they contain. They admit that the Pakcers' and Stockyards' Act of 1921 has been before the courts and that such statute has been enforced by the Secretary of Agriculture and say that such act was passed with less regulatory content than would have been passed but for the consent decree, herein sought to be modified.

44. Answereng paragraph XI as to the construction of the decree therein, these interveners say they submit that the decree speaks for itself and reference is made thereto. As to the statement with reference to the trustees' reports interveners make reference to such reports for correct statements thereof. All other allegations in said paragraph are denied.

45. Answering paragraph XII, interveners make reference to the Packers' and Stockyards' Act of 1921 for a cor-ect and full statement thereof and say that such Act was less inclusive than it would have been except for the Consent Decree herein.

46. Answering paragraph XIII, interveners submit that the allegations in said paragraph are wholly immaterial but should the same be held to be material the construction of the decision therein referred to is for the court, and these interveners deny the construction stated by said defendants.

47. Answering sub-paragraphs 1, 3, 4, 5, and 6 of paragraph XIV, these interveners being without accurate information can neither admit nor deny same but demand

strict proof thereof and for special answer these Interveners say that the allegations of said defendants, especially the allegations of paragraph 6, show a healthy profit to the defendants far in excess of that received by the [fols. 332 & 333] average farmer, livestock grower, or merchant in the years named.

48. Answering sub-paragraph 2 of paragraph XIV, the same is denied.

49. Answering paragraph XV, these interveners say that the same is denied except insofar as specific admissions hereinbefore contained admit parts thereof, and specifically these interveners submit that defendants could not have suffered from the decree herein as they have not obeyed the same.

50. Referring to Exhibit "A" of said petition, these interveners say that a correct and full statement thereof is in the records of this court and they make reference thereto for an accurate statement thereof.

Wherefore interveners pray that the petition be dismissed at the cost of petitioners.

Edgar Watkins, Attorney for Interveners. Mac Asbill, of Watkins, Asbill & Watkins, Atlanta Trust Co. Bldg., Atlanta, Georgia, of Counsel.

Duly sworn to by R. H. Rowe. Jurat omitted in printing.

[fol. 334] In Supreme Court of the District of Columbia

[Title omitted]

Answer of American Wholesale Grocers' Association et al. of the Amended Petition to Modify of Armour & Company et al.—Filed July 3, 1930

Come now American Wholesale Grocers' Association, and the person, firms, and corporations joining in the intervention filed in this cause September 10, 1921 and without waiving their motion, general and special, to dismiss the petition of Armour & Company and those joining with it in its amended petition to modify but insisting on said motion

and contending that this court is without jurisdiction of said petition, and insisting that said petition shows no equitable reason for the relief prayed or any part thereof, and reiterating the special grounds of their motion directed to impertinencies in said petitions, respectfully say:

1. For convenience the interveners answering herein will be called Interveners, and Armour & Company and those joining with it in its petition to modify will be called the Armour defendants.

2. The Armour defendants herein should not be permitted to maintain this petition for that they are estopped under the facts in this case from so doing.

Said Armour defendants for good and valuable considerations voluntarily agreed to the decree of February 27, [fol. 335] 1920, entered in this court and have received such considerations, among others the following:

(a) Prior to the entry of said consent decree, and to the knowledge of the Armour defendants, the Federal Trade Commission and special counsel employed by the Department of Justice had, after hearings and study, concluded and reported that said defendants were in violation of the Anti-Trust laws of the United States; that the Attorney General of the United States then in office had by presenting witnesses to the Grand Jury in the United States District Court at Chicago, Ill., and in proposing the same course in New York, N. Y., sought and was seeking criminal indictments against said defendants; that said Attorney General was preparing to file suits in equity against said defendants to enjoin the continuation of said violations and to dissolve the said corporate defendants and to have appointed a receiver or receivers for all their assets used in such violations; and that because of the contract for a consent decree offered and made by said defendants, such criminal prosecutions and such equity suits were all discontinued on and after the contract for said consent decree was made, and now and when the petition of defendants was filed, rights of action, both criminal and civil, for the offenses then involved are and were barred by the statutes of limitation.

(b) Because as a result of the entry of said decree of February 27, 1920, said Armour defendants were enabled

to and did intervene in that certain proceeding then pending before the Interstate Commerce Commission entitled Southern Wholesale Grocers' Association vs. certain railroads therein named, and that certain other proceeding entitled National Wholesale Grocers' Association vs. certain railroads therein named and other persons therein named, [fol. 336] and did by intervention plead as an answer to the complaints therein and to the allegations that said Armour defendants enjoyed unlawful privileges in rates, rules and practices, that the said consent decree had terminated the competition between wholesale grocers and said Armour defendants, and that by reason of said decree complainants in said complaints before the Interstate Commerce Commission were not entitled to any relief, and because of such decree so pleaded by said Armour defendants substantial relief on said complaints was denied by the Interstate Commerce Commission to the advantage of said Armour defendants and said Commission in its report, reported in Vol. 62 I. C. C. Reports, at page 375 theerof, sustained in whole or in part said contentions of the Armour defendants.

(c) Because by reason of the entry of said consent decree the Congress of the United States refrained from passing more stringent regulatory laws than would otherwise have been passed and in the enactment of the Packers' and Stockyards' Act of 1921 gave force and effect to said consent decree by making said Act less inclusive than it otherwise would have been.

(d) That interveners here could have, prior to the entry of said consent decree, filed in their own name and behalf suits at law and equity to enforce against said Armour defendants their rights for special injuries caused by the violation by said defendants of the Anti-Trust laws aforesaid, all of which rights interveners abandoned because of the entry of said decree and such rights are now and were when the Petition to Modify herein was filed, barred by the statutes of limitation.

For each and all of the foregoing reasons said Armour defendants having knowingly obtained the advantages and considerations aforesaid, are estopped from prosecuting any efforts or proceedings, especially the efforts set up in [fol. 337] their amended petition, now before the court, to modify the consent decree.

(3) That said Armour defendants do not come into this court of equity with clean hands but have so conducted themselves as not to entitle them to any relief in a court of equity, said defendants being now and at all times since the entry of said decree of February 27, 1920 in violation thereof, and especially in the following particulars, to-wit: That said Armour defendants have continued to purchase the items referred to in paragraphs 4 and 5 of said consent decree and have not complied with the orders of this court in that they have by purchase and otherwise put themselves in a position where it will be more difficult for them to comply with the decree if and when the provisional modification now in force is terminated; that said Armour defendants in pursuance of their unlawful practices have continued to demand and receive from the carriers, especially the carriers in western trunk line territory preference in the rates, rules, and practices of such carriers and are now receiving rate adjustments from such carriers that are unreasonable and unjust and, as interveners are informed and believe, are in violation of the law in that in conflict with the applicable tariffs they are receiving rates on packer or peddler cars on shipments of less than the minimum weight required in such tariffs; that said Armour defendants are further openly and contemptuously in violation of the decree herein and the Anti-Trust Laws of the United States in that as interveners are informed and believe they are through a corporation know as the Waugh Equipment Company owned by said defendants or at least controlled by them, exerting the influence of a large shipper by seeking to coerce and compel carriers to purchase the products of said Company, thereby carrying out their continuing plan of obtaining for themselves special privileges and advantages. For each and all [fol. 338] of said reasons said Armour & Company, defendants, are not entitled to maintain this suit and relief should be denied them.

4. In the amended petitions herein of said Armour defendants there is such an intermixture of prophesy, opinions and conclusions with a small proportion of facts that an answer thereto is difficult and these interveners deny each and every of the allegations of fact, conclusions, opin-

ions, and prophesy contained in said petitions, unless hereinafter specifically admitted.

5. Referring in detail to the amended petitions of said Armour defendants and to the preliminary paragraphs thereof in which it is alleged that there have been radical and revolutionary changes since the entrance of the consent decree in economic conditions, merchandising methods, etc., these interveners deny the same as alleged and say that such changes, if any there be, have been a natural and orderly economic development differing if at all only in degree from changes prior to 1920, and in no way do such changes, if any, affect the question involved in the bill of complaint of the United States herein on which said consent decree was entered.

6. Referring in detail to paragraphs 1 to 4 inclusive of the amended petitions of said Armour defendants, interveners refer to the record herein for a correct statement of the original petition and the decree.

7. Answering paragraphs 5 interveners admit that the purpose of the Sherman Anti-Trust Act is as stated, but they deny that the consent decree will have the effect of restraining commerce or competition and as to the other allegations therein they refer to the consent decree itself for a correct statement of what it contains.

8. Answering paragraph 6 interveners deny the same and say that such changes, if any there be, have been a natural and orderly economic development and in no way affect the [fol. 339] question involved in the complaint of the United States herein on which said consent decree was entered, and they deny that the entry of these defendants into the unrelated lines will increase competition or prevent dominant control by others, and they deny that the restrictions imposed by these defendants by the consent decree are prejudicial to livestock producers or the consuming public, and say that insofar as said decree imposes restraint upon the said Armour defendants it is fair, just, legal, and consented to by said defendants.

9. Answering paragraphs 7 and 8 interveners submit that the allegations in said paragraphs contained are wholly immaterial but should the same be held to be material the

construction of the decision therein referred to is for the court, and these interveners do not agree with the construction stated by said defendants.

10. Answering paragraphs 9, 10, and 11, these interveners make reference to the Packers' Stockyards' Act of 1921 for a correct and full statement thereof and say that such Act was less inclusive than it would have been except for the consent decree herein.

11. Answering paragraph 12, interveners admit that the Packers' Stockyards' Act of 1921 has been considered by the courts and that it has been enforced by the Secretary of Agriculture and say that such act was passed with less regulatory content than would have been the situation but for said consent decree.

12. Answering paragraph 13 interveners submit that the same is impertinent and wholly immaterial.

13. Answering paragraphs 14 and 15, interveners say that the allegations contained therein are immaterial to any issue in this cause, but should the same be held to be material by the court these interveners say that the losses su- [fol. 340] stained by the defendants herein since the entry of the said consent decree are in no way due to the operation of said decree, but to other causes set forth in paragraph 17 of the petition of said Armour defendants; as to whether or not there have been losses interveners for lack of information can neither admit nor deny but demand strict proof.

14. Answering paragraph 16 to 19, inclusive, interveners say that the same are immaterial to any issue herein but should the same be held to be material in any way, interveners being without information can neither admit nor deny the same but demand strict proof thereof. As to the hearings before the Secretary of Agriculture they refer to the record in that proceeding for a correct statement of what it contains, and further they say that insofar as such proceedings indicated competition between said Armour defendants and other meat packing establishments it is a healthy condition which the said consent decree was intended to preserve.

15. Answering paragraphs 20 to 22 inclusive, these interveners admit that certain reports were filed and reference

is made thereto for an accurate and complete statement of what they contain.

16. Answering paragraphs 23 to 25, inclusive, interveners say that the same are immaterial to any issue in this cause, but if same should be held material these interveners being without information can neither admit nor deny the same but demand strict proof thereof.

17. Answering paragraph 26, interveners refer to the record herein for a correct statement of what defendants were discharged from the effect of the said consent decree.

18. Answering paragraph 27 interveners say that if the court holds that said paragraph is material that reference is made for answer to the record in this cause showing their [fol. 341] intervention and the decrees, opinions, and orders of this court in relation thereto.

19. Answering paragraph 28, interveners deny the same insofar as said paragraph alleges that said Armour defendants have no unfair advantage and say that the proceedings referred to in said paragraph and the evidence therein show unfair preference and advantage conceded by interstate carriers to said defendants and that the decision of the Interstate Commerce Commission was rendered as alleged, solely because of the fact, as these interveners are informed and believe and believing so allege, that prior thereto this court had entered the consent decree herein.

20. Answering paragraph 29, interveners deny that they will not be subjected to unfair and illegal prejudice if said consent decree is modified as prayed, and deny that they oppose modification of said consent decree to avoid any legitimate competition in the wholesale grocery business. They do admit there are a large number of wholesale grocers, perhaps not 6,000, but that such wholesale grocers act independently and are customers of the Armour defendants. As to all other allegations being without information interveners can neither admit nor deny the same but demand strict proof thereof.

21. Answering paragraphs 30 and 31, interveners say that they are without accurate information and therefore can neither admit nor deny the same but demand strict proof thereof.

22. Answering paragraph 32, interveners say that as to the allegations of fact therein they are without information and therefore can neither admit nor deny the same but demand strict proof thereof, and as to the conclusion drawn in the last seven lines thereof interveners deny the same and say that such conclusion does not follow.

23. Answering paragraph 33, interveners submit the [fol. 342] same is immaterial to any issue herein, but if the same should be held material they say that if there is competition in the sale of meats as alleged it is a healthy condition which the said consent decree is intended to preserve and as to the alleged advantage of small packers interveners deny the same.

24. Answering paragraph 34, insofar as the same refers to testimony before the Secretary of Agriculture interveners refer to the record in that proceeding for a correct statement of what it contains, and as to the conclusions drawn from that record by the Armour defendants interveners can neither admit nor deny the same but demand strict proof thereof.

25. Answering paragraph 35, in which it is alleged that there have been radical and revolutionary changes in economic conditions, merchandising methods, etc., since the entry of the consent decree, interveners deny the same and say that such developments were well known before 1920 and that they have not become a general condition since 1920, and for further answer interveners say that the said Armour defendants have participated in such developments both before and since 1920 to a greater degree than is general among food manufacturers.

26. Answering paragraph 36, interveners say that the same is irrelevant to any issue herein but should the same be held to be relevant in any way, it presents but a question of opinion as to which interveners are without information and can, therefore, neither admit nor deny same but demand strict proof thereof should it be held that said paragraph is material.

27. Answering paragraphs 37 and 38, interveners submit that the same are immaterial to any issue herein but should the same be held material, they are without informa-

tion and therefore can neither admit nor deny the same but demand strict proof thereof.

[fol. 343] 28. Answering paragraph 39, interveners say that as to the allegations of trends and prophesies they are without information and therefore can neither admit nor deny the same but demand strict proof thereof, and as to the allegations that the said Armour defendants have been injured by the said consent decree they deny the same and say that defendants could not have suffered from the decree herein because they have never fully obeyed the same.

29. Answering paragraph 40 to 43, inclusive, interveners say that for lack of information they can neither admit nor deny the specific allegations contained therein but demand strict proof thereof. They do admit that there has been some growth since 1920 in the extent of business in the chain store and say that such growth was reasonably within the contemplation of said Armour defendants at the time they agreed to the decree of February 27, 1920, and that there is nothing in such growth justifying a change in the decree as here sought.

30. Answering paragraph 44, interveners being without information can neither admit nor deny the same, except as to the last seven lines thereof and as to which they deny the same.

31. Answering paragraphs 45 to 47, inclusive, interveners submit that insofar as same is claimed as a basis for affirmative relief it is immaterial to any issue in this cause but it does show, as interveners submit, an intention on the part of said Armour defendants themselves to participate further in the trend toward concentrated control of food manufacturing.

32. Answering paragraph 48, interveners deny that in 1920 the chain grocery stores sold practically no meats and deny that there is the serious danger claimed in the latter part of the paragraph.

33. Answering paragraph 49, interveners say that for lack of information they can neither admit nor deny the [fol. 344] allegations contained therein but demand strict proof thereof.

34. Answering paragraph 50, these interveners submit that if such allegations are true they show no reason for modification of the consent decree herein but merely a change in degree, and as to such allegations these interveners being without accurate information can neither admit nor deny the same but demand strict proof thereof.

35. Answering paragraphs 51 to 53, inclusive, interveners say that for lack of information they can neither admit nor deny the same but demand strict proof thereof.

36. Answering paragraphs 54 and 55, as to the allegations relating to the business and profits of the named Companies therein, interveners being without information can neither admit nor deny the same but demand strict proof thereof, and specifically interveners deny that said named businesses are conducted on a more profitable basis than Armour defendants and say there is no legal propriety in comparing the two classes of business.

37. Answering paragraph 56, interveners submit that the allegation therein is immaterial to any issue in this cause, and as to the conclusions drawn, they are denied.

38. Answering paragraph 57, interveners deny the first six lines thereof and as to the rest of said paragraph interveners being without information can neither admit nor deny the same. They do admit there are a large number of wholesale grocers, but say that such wholesale grocers act independently and are customers of the Armour defendants.

39. Answering paragraph 58, interveners say that they are without information as to the allegations therein and therefore can neither admit nor deny the same but demand strict proof thereof, and specifically these interveners say that the elimination therein referred to tends to promote monopolization and restraint of trade.

[fol. 345] 40. Answering paragraph 59, interveners deny that most of the grocers merchandise grocery products under their own private labels and brands, admit that some grocers do, but say that this condition existed at and before February 27, 1920, and interveners submit that the use of brands would not in anywise prevent monopolization or restraint of trade and say that said Armour defendants use and have used for years special brands.

41. Answering paragraph 60, interveners deny that Armour defendants have no preference in transportation through the use of their refrigerator cars, and as to the rest of the allegations therein the interveners for lack of information can neither admit nor deny the same but demand strict proof thereof.

42. Answering paragraph 61, interveners deny that their intervention in this cause to protect the said consent decree is inequitable, and as to the other allegations and prophesies therein these interveners being unable to look into the future can neither admit nor deny the same and demand strict proof thereof.

43. Answering paragraph 62, interveners admit that packers by means of their branch houses and car routes reach all sections of the country and provide a wide outlet, but say that by reason of their branch houses and car routes they have a preference and advantage over merchants engaged in distributing the unrelated commodities in the decree, as aforesaid, an advantage which was sought to be prevented by said decree. As to the other allegations therein interveners being without knowledge can neither admit nor deny the same but demand strict proof thereof.

44. Answering paragraph 63, interveners admit there was a hearing as stated at which differences of opinion [fol. 346] were expressed by different witnesses and refer to the report for an accurate statement of what occurred.

45. Answering paragraph 64, interveners say that the same is immaterial to any issue in this cause, but if it should be held material they are without knowledge, and can therefore neither admit nor deny the same and demand strict proof thereof.

46. Answering paragraph 65, interveners deny that the handling of unrelated commodities by the Armour defendants would be in the interest of the public or would promote competition or a reduction in price, and as to the effect of such business upon the costs of the said defendants interveners are without knowledge and can, therefore, neither admit nor deny the same but demand strict proof thereof.

47. Answering paragraph 66, interveners say that they are without information and can neither admit nor deny the

same but demand strict proof thereof. They admit that they do vigorously oppose modification of the said consent decree because interveners submit that a modification would be unauthorized, destructive of competition, and injurious to the public.

48. Answering paragraphs 67 to 70, inclusive, interveners deny that the chain store systems work a special handicap on the Armour defendants and specifically say that if said defendants permit themselves to sell goods to the chain stores at a less price than they sell to others that said defendants are themselves guilty of violating the Clayton Act and the consent decree. For further answer interveners deny that the alleged loss of business by the Armour defendants has been due to the operation of the said consent decree, and they submit that such allegations are irrelevant to any issue in this cause, but if they should be held relevant by the court, interveners for lack of information can neither admit nor deny the same but demand strict proof thereof.

[fol. 347] 49. Answering paragraph 71, as to the prophesy therein contained of the merger of meat packers with grocery chains, interveners being unable to look into the future cannot admit or deny the same, but on information and belief believe and so allege, that said Armour defendants do contemplate mergers with chain stores, such belief being based upon the statement of brokers in Chicago, published in the Congressional Record of May 22, 1930, Volume 72, No. 128, page 9712.

50. Answering paragraph 72, interveners say that the conclusions expressed therein do not follow from any allegations therein or in any other paragraph of the petition, and are wholly irrelevant to any issue in this cause.

51. Answering paragraph 73, interveners for lack of information can neither admit nor deny the same and demand strict proof thereof.

52. Answering paragraph 74 interveners submit the construction thereof to the court and insofar as said paragraph contains allegations other than construction of the decree interveners submit that same is an expression of an opinion or prophesy and say they are without accurate in-

formation and can neither admit nor deny the same but demand strict proof thereof.

53. Answering paragraph 75, interveners deny that Armour defendants could not possibly constitute a danger of monopolization in the distribution of foods and deny that said defendants are at a disadvantage in any legitimate enterprise because of the Consent Decree and say that without the consent decree defendants would continue as they have for more than thirty years in restraint of trade and in tendencies toward monopolization and that said defendants are not satisfied with a parity with their competitors but seek preferences. Further answering said paragraph interveners deny that said defendants will be [fol. 348] injured as alleged therein and say that the decree is not unfair and unjust, but is just, fair, legal and consented to by said defendants.

54. Answering paragraph 76 interveners deny the same. For further and general answer to this and all other paragraphs of the petition of the Armour defendants interveners refer to and make part hereof their answer to the Swift defendants filed herewith.

Wherefore interveners pray that the petition be dismissed at the cost of the petitioners.

Edgar Watkins, Attorney for Interveners. Mac Asbill, of Watkins, Asbill & Watkins, Atlanta Trust Co. Bldg., Atlanta, Georgia, of Counsel.

Duly sworn to by R. H. Rowe. Jurat omitted in printing.

[fol. 349] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ANSWER OF INTERVENER NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES TO AMEND PETITION OF SWIFT & COMPANY ET AL.

Comes now National Wholesale Grocers' Association of the United States and for answer to the Amended Petition of Swift & Company, et al., on file herein, says:

1. For answer to the allegations contained in paragraphs 1 to 12, inclusive, of Part I of said amended petition, this

intervener admits that since the year 1920 certain trends in the direction of integration, mass selling, diversification and development of brands have become considerably extended, but as to what, if to any extent, such brands have resulted in reducing costs to ultimate consumers this intervener is without knowledge; that as to whether such trends are economically beneficial or otherwise from the standpoint of the public welfare is a matter highly controversial and concerning which there are widely differing opinions; that said trends had a definite and well-defined existence at the time said consent decree was entered and the same were then within the knowledge and contemplation of the parties to said decree; denies that the said decree in purpose or effect prevents petitioners from bringing about lower costs of distribution or from improving its [fol. 350] service to its customers; denies that said decree unnecessarily restrains petitioners, or that it is oppressive, injurious, lessens competition or is against the public interest, but avers, on the contrary, that said decree has had the effect of stimulating trade and commerce in the sale of commodities not directly related to the packing industry by enabling numerous individuals and concerns to engage in the business of manufacturing and selling said commodities to an extent and on a scale which would have been impossible if the packer defendants named in said decree had not been placed under the restraints and injunctions thereof.

2. For answer to the allegations contained in paragraphs 1 to 12, of Part II of said amended petition, this intervener says that as to the statistical and financial data contained therein this intervener is without knowledge and therefore denies same; this intervener denies that in 1920 the chain grocery stores were a relatively small factor in the distribution of food products and denies that the number or strength of chain store organizations shows that the defendants named in the decree would not or could not become a food monopoly if permitted to deal in commodities prohibited by the decree or if permitted to conduct retail meat markets; denies that said consent decree is unnecessary, unjust or oppressive to petitioners or against the public interest.

For further answer to the allegations contained in said Part II of said amended petition this intervener says that

the petitioner, Swift & Company, was at the time said decree was entered, and still is, a dominant factor in the meat packing industry; that said industry as a whole ranks first among American manufacturing enterprises; that the gross value of the products produced by this industry is in excess of $3,000,000,000 per annum; that said products are of vital importance to the health and welfare of the consuming public; that by reason of the favorable position in the packing [fol. 351] industry held by said petitioners their products are, and will continue to be, in such demand as to enable them to compete successfully for markets without being permitted to obtain similar leadership in the manufacture, processing and handling of other necessaries of life; that if said packers are permitted without restriction to manufacture and distribute food products generally, including meats, it is only a question of time until they can, if they are so disposed, become a greater menace to the public welfare than they were at the time said decree was entered.

For further answer to the allegations contained in paragraph 10 of said Part II, this intervener admits that the practice of buying branded products by chain stores, including the brands of these petitioners, if the sole purpose thereof is to enable them to sell at low prices, is a commendable practice, but intervener says that said practice, if lawfully conducted, does not operate to the disadvantage of petitioners to any greater extent than it does to the manufacturers of branded products in general; on the contrary, the petitioners' brands are so well known and so well established in domestic and foreign markets and constitute such a large part of the total production of meat and meat products that they are in an advantageous position in dealing with said chain stores as well as in dealing with all other purchasers of their commodities; that as to the allegation in said paragraph 10 to the effect that the handling of petitioners' brands by chain stores has resulted in restricting petitioners' market among independent retailers, and in forcing petitioners to move their perishable products at drastic price concessions, this intervener is without knowledge and therefore denies same.

For further answer to paragraph 11 of said Part II of said amended petition, this intervener denies that petitioners are forced to sell their products at a loss or at unreasonably low prices as the result of the buying power of

[fol. 352] chain stores; and denies that the bargaining power of petitioners is unreasonably restricted by the provisions of said consent decree.

For further answer to the allegations contained in paragraph 12 of said Part II, particularly the allegation that petitioners have been compelled to seek out and cultivate small, individual retailers of meat, thereby adding to the number of small orders, this intervener is without knowledge; this intervener denies that the reduction in the size of the orders is common to petitioners but avers that the practice and trend is common to all wholesale and retail merchandising outlets; and further avers that the said decline in size of orders is the reflection of a decrease in production of live stock, as well as a decrease in consumption of meat products, as reported by the United States Department of Agriculture, and has no relation to the operation of the said decree or its effect upon customers of competitors of said petitioners; that said interveners are likewise without knowledge with regard to each and every allegation contained in said paragraph, and therefore deny same.

3. For answer to the allegations contained in paragraphs 1 to 4, inclusive, of Part III of said amended petition, this intervener admits that petitioners are engaged in the business of manufacturing and dealing in meats, meat products, livestock products, butter, cheese, eggs and poultry; admits that grocery chain stores are also engaged to some extent in the same fields of industry, but as to the extent to which they have become so engaged by establishing packing plants, sausage-making plants, dairies, refrigerated meat warehouses, meat cutting plants, cheese factories or creameries, this intervener is without knowledge; intervener denies that said consent decree is unfair in fact, or that it appears to be so for the reason that grocery chains are entering the meat packing and produce business while petitioners are prohibited from entering the grocery busi- [fol. 353] ness or selling meats and produce at retail; that as to whether, as alleged in said paragraph 2, the entry of chain stores into the business of performing the collecting and wholesaling functions in butter and eggs for their stores has injured petitioners, or has resulted in leaving a surplus of collecting and wholesaling facilities on peti-

tioners' hands with resulting difficulties of operation and losses, or has reduced the number of available retail outlets to petitioners, this intervener is without knowledge; denies that the prohibitions of said consent decree against the establishment of retail stores by petitioners are unfair.

That as to the allegations contained in said paragraph 3, that said chain stores are entering various other manufacturing fields, this intervener is without knowledge and therefore denies same.

That as to the allegations contained in said paragraph 4, to the effect that the absorption of the manufacturing and wholesaling functions by chain stores has in certain instances caused loss and embarrassment to some manufacturers, or has forced others to establish their own retail outlets, or that the entry of the grocery chains into the business of retailing meats has already injured petitioners, this intervener is without knowledge; that the other allegations contained in said paragraph 4 are argumentative, irrelevant and tender no issuable facts.

4. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part IV of said amended petition this intervener says that as to the allegations contained in said paragraph 1, to the effect that certain meat packer competitors of petitioners, who are not subject to said consent decree, are selling meats at retail, and as to the number and names of the concerns which are alleged to be so engaged, it is without knowledge.

That as to the allegations contained in said paragraph 2 that there is a possibility that more of the non-defendant meat packers will merge with grocery chains and that two instances of such mergers have already occurred, and [fol. 354] that such possible mergers would seriously injure the business of petitioners unless said consent decree is modified, as prayed for by petitioners, this intervener is without knowledge. This intervener denies that said consent decree is unfair or unjust to petitioners in that it prohibits them from establishing retail outlets, or for any other reason.

That as to the allegations contained in said paragraph 3 that non-defendant meat packers have their own branch houses and operate refrigerator cars and that they handle diversified lines of groceries and other food products, this

intervener is without knowledge. This intervener denies that said consent decree is unjust or unfair or that it substantially lessens competition or that it is against the public interest.

5. Answering the allegations contained in paragraphs 1 to 11, inclusive, of Part V of said amended petition, this intervener admits that there are approximately 6,000 wholesale grocers located in approximately 2,300 cities throughout the United States, and that they do a large volume of business; denies that the nature of the wholesale grocery business is such that it cannot be monopolized by a small number of concerns, particularly in certain lines such as the handling of food products; denies that if petitioners were permitted to engage in selling groceries at wholesale they could not, even if they desired to do so, monopolize the manufacture and distribution of food products; denies that they could not restrain trade or competition therein or constitute a danger or threat of monopoly if permitted to engage in selling groceries at wholesale.

That as to the allegations contained in said paragraph 2 as to the extent to which voluntary chains or associations have been formed by wholesale grocers, this intervener is without knowledge; that as to what will take place in the future in this direction is a matter of pure speculation. This intervener denies that if petitioners are permitted to [fol. 355] sell groceries at wholesale they could not create a monopoly or constitute a danger or threat of monopoly in the manufacture and distribution of food products.

This intervener denies the allegation contained in said paragraph 3 that the operation of chains of retail grocery stores by wholesale grocers "is a shining example" of the unfairness of the decree; denies that intervener selfishly opposes the modification of said consent decree; denies that said decree creates a special privilege for wholesale grocers or grocery chains to the injury of petitioners or otherwise; and denies that said consent decree violates the spirit of the anti-trust laws or that it reduces competition or is against the public interest.

That as to the allegations contained in paragraph 4, that since the entry of the decree many wholesale grocers have begun and are now handling packing house products, that these products are sold in retail chains of wholesale gro-

cers and other allegations of a similar nature, this intervener is without knowledge and therefore denies same. This intervener further denies that the decree is unfair and unjust to the defendants herein; that any special privilege is created for wholesale grocers in any field and that it is against public interest as declared by the anti-trust laws.

That as to the allegations contained in said paragraph 5 this intervener denies that in order to keep pace with the modern trend toward chain retail food stores a food manufacturer and wholesaler must handle other lines of commodities; that as to whether, and as to what extent, canned goods and other groceries can be handled efficiently with meats this intervener is without knowledge. In this connection this intervener says that whatever efficiency exists at the present time in the combined handling of said products existed to an equal extent at the time said consent decree was entered, and that such efficiency constitutes no test as to the violation of the anti-trust laws; the same [fol. 356] statement is true of similar allegations contained in said paragraph 6 of the amended petition.

For further answer to the allegations contained in said paragraph 6 this intervener denies that it is to the interest of the livestock producers or the meat industry of the country or the consumers of meats that petitioners be permitted to distribute groceries; denies that the exclusion of petitioners from the grocery business serves any selfish interest of the wholesale grocers or is damaging to livestock producers and consumers, or is unnecessary or unfair or lessens competition or is against the public interest.

For answer to the allegations contained in said paragraph 7 this intervener says that it has no accurate information as to the extent to which petitioners are engaged in transporting and distributing grocery products, but says that to whatever extent petitioners are so engaged they are violating the provisions of said consent decree; admits that in the year 1921 the Interstate Commerce Commission decided that the defendants named in said decree had no unfair advantage over wholesale grocers in field of railroad transportation by reason of their refrigerator cars, but in this connection this intervener says that said decision of the Interstate Commerce Commission was rendered after said consent decree was entered, and one of the reasons

why the Interstate Commerce Commission refused to grant the full relief demanded in the proceedings was that the packers brought to the attention of the Commission the entry of the consent decree, represented that they were carrying out the terms of said decree in good faith, and asserted that the entry of said decree eliminated the competition to which the grocers objected and would bring about a result more favorable to the complainants than any obtainable by an order in that proceeding (61 I. C. C. Rep. 375; June 22, 1921). This intervener denies that by [fol. 357] reason of the increased use of motor driven vehicles the petitioners would have no advantage over the grocers with respect to transportation facilities if the petitioners were permitted to engage in the manufacture and distribution of the unrelated lines mentioned in said decree.

For answer to the allegations contained in paragraph 8 this intervener admits that certain of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names, and that they merchandise certain grocery products thereunder; admits that trade marks and brands of individual wholesale grocers, which in fact are their own trade names of brands, cannot lawfully be monopolized by others, but the products so sold under particular trade marks or brands may lawfully be, and are, sold by others and are susceptible of constituting an integral part of a monopoly in the handling of food products; denies that there is no possibility of a monopolization of grocery products on the part of the petitioners and other defendants named in said consent decree, unless the prohibitions of said decree are continued in full force and effect.

For answer to the allegations contained in said paragraph 9 this intervenor admits that certain retail chain stores perform wholesale functions; denies that by reason thereof the petitioners and other defendants named in said decree could not continue or make a monopoly effective; on the contrary, this intervener says that petitioners have given and can give no adequate assurance that if relieved from the restraints of said decree they will not proceed to the establishment of still greater dominance in the food industries than existed at the time said consent decree was

entered; petitioners have not given and cannot give any adequate assurance that if the provisions of said consent decree are modified, as prayed by them, they will not immediately proceed to form mergers and combinations and engage in conspiracies more powerful and inimical to the public welfare than existed when said consent decree was entered.

[fol. 358] For answer to the allegations contained in said paragraph 10 this intervener says that as to whether or not the removal of the restrictions contained in said consent decree, with respect to retail markets, will be ineffective for the purposes the petitioners have in mind, unless corresponding modification of paragraphs 3, 4 and 5 of said decree, with respect to grocery products and other commodities, is also made, this intervener is without knowledge and, therefore, denies said allegation; denies that competitive conditions and the modern trend of merchandising are such that only combination food stores selling meats in combination with groceries can be successfully established.

For answer to the allegations contained in said paragraph 11 this intervener denies that the disadvantages or difficulties suffered by the wholesale grocers of the country have not been caused by petitioners and the other defendants named in said decree, and denies that said wholesale grocers would have suffered such disadvantages and difficulties if the petitioners' right to deal in such articles had not been prohibited by said decree; denies that such disadvantages and difficulties have not been due to the activities of the packers and denies that the reasons therefor are found in the alleged movement among wholesale grocers to do their own manufacturing, to establish their own private brands or to operate retail stores; denies that on account of any of the facts stated in said paragraph said consent decree is unfair to petitioners or wrongfully excludes them from fields of business in which they could engage with benefit to the public, and denies that such exclusion is against the public interest.

6. For answer to the allegations contained in paragraphs 1 to 8, inclusive, of Part VI of said amended petition, this intervener admits that petitioners are forbidden by said consent decree from engaging in certain activities, and that since the entry of said decree other food manufacturers

[fol. 359] have diversified their activities in this direction, but in this connection this intervener says that all of the so-called trends in the manufacture and distribution of foods and other commodities were in operation at the time said consent decree was entered; that the inferences drawn from the facts alleged in said paragraphs are speculative, insusceptible of verification, and are not correctly drawn; that even if such facts had existed at the time said consent decree was entered, to the same extent as at the present time, they would not have constituted any defense to the bill of complaint filed in this cause. That as to whether the concerns mentioned in said paragraphs 2 and 3 are examples of trends which have developed since said decree was entered and as to whether the General Foods Corporation produces and distributes the products mentioned in said paragraph 3, this intervener is without knowledge; that as to whether Standard Brands, Inc., comprises the several concerns mentioned in said paragraph 4, or have made available to retail dealers the marketing facilities mentioned therein, this intervener is without knowledge; with respect to the allegations contained in said paragraph 5 that by the processes mentioned therein prices to consumers are lower, this intervener says that all of said allegations are the expression of theories and opinions with regard to complex economic facts, and to the extent that such allegations are true they present situations no different than those that existed at the time said consent decree was entered; that said allegations merely constitute an argumentative attack on the policy of the anti-trust laws of the United States. The same is true of the allegations contained in said paragraphs 6, 7 and 8, and for further answer to the allegations contained in said paragraphs this intervener denies that petitioners are prohibited from contributing to the reduction of the cost of distributive food products; denies that said consent decree is inequitable [fol. 360] or that it lessens competition or that it is against public interest; denies that the defendants named in said decree could not constitute a danger or monopoly or domination in the distribution of foods if released from the prohibitions of said decree.

7. For answer to the allegations contained in paragraphs 1 to 4, inclusive, of Part VII of said amended petition, this

intervener denies that the said consent decree is inequitable or that it is detrimental to the public, or that it prevents the defendants named therein from distributing their products at reasonable cost, or that it stultifies any alleged attempt on the part of petitioners and the other defendants named in said decree to cheapen their methods of distributing meats; that as to whether the defendants named in said decree have suffered losses as the result of the provisions of said decree this intervener is without knowledge; this intervener denies that said consent decree contains the power to destroy the defendants named therein, and denies that the results of said decree were not contemplated by the consenting parties thereto at the time said decree was entered.

8. For answer to the allegations contained in paragraphs 1 to 5, inclusive, of Part VIII of said amended petition, this intervener admits that farmers and livestock producers of the United States are an important part of the public; admits that agriculture is a fundamental industry of the nation; denies that the wholesale grocers are a small and relatively unimportant part of the public, or that their functions are becoming uneconomical or obsolete; admits that the prosperity of the farmers and the livestock producers is a matter of public concern; admits that the large packers by means of their various facilities perform useful functions in the distribution of livestock products, but denies that it is to the interest of the livestock producers to have the use of any of the marketing facilities prohibited by the decree; denies that the large packers [fol. 361] are crippled by the decree or that the restrictions thereof are artificial or unreasonable.

That as to the allegations contained in said paragraph 3 to the effect that the farmers and livestock producers of the nation are in favor of the modification of the decree, and as to the allegation that certain livestock producers and farmers associations are urging the modification of said decree and have passed resolutions to that effect, this intervener says that it is without knowledge and therefore denies same; this intervener alleges upon information and belief that the resolutions adopted by the Associations, referred to in said paragraphs, were instigated and prepared in whole or in part by these petitioners and that said Associations do not favor any modification

of the decree directly affecting them or their members; this intervener denies that the modification of the decree as prayed would be in the interest of farmers and livestock producers or would be in the public interest; admits that in 1929 at the request of the Attorney General the Secretary of Agriculture of the United States held hearings on the subject of the modification of said consent decree; admits that numerous witnesses appeared at said hearing, but as to whether, or to what extent, said witnesses urged the modification of said consent decree as a measure for their welfare or the welfare of the public, this intervener is without knowledge; denies that public opinion in general is in favor of the modification of said decree, but on the contrary your intervener alleges that the general public favors the further continuance and maintenance of the decree and its strict enforcement, and opposes any modification thereof.

9. For answer to the allegations contained in paragraphs 1 to 5 of Part IX of said amended petition, this intervener says that as to whether the defendants named in said decree or any of them have been forced out of the business of handling milk and cream, or of manufacturing and handling butter and cheese in any of the territories mentioned [fol. 362] in said paragraph 1, this intervener is without knowledge; denies that said decree is unfair or oppressive on account of any of its provisions with regard to the handling by the defendants named in said decree of milk or cream or the manufactured products thereof; that as to whether or not the petitioners have suffered or will suffer loss or damage in the handling of said products or the manufacture thereof unless the prohibitions of said decree with respect to fresh milk and cream are modified, this intervener is without knowledge; admits that petitioners are prohibited by the decree from dealing in many poultry and animal feeds, but as to whether or not the petitioners have suffered loss or damage to their business on account of such prohibitions this intervener is without knowledge; denies that it would be to the advantage of the farmer or the consumer if petitioners could deal in fresh milk and cream; denies that the removal of the prohibitions against doing so would furnish a more highly competitive market for poultry, eggs, milk and cream; and denies that said decree is unnecessary or op-

pressive to petitioners or detrimental to farmers or consumers, or that it is against the public interest.

10. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part X of said amended petition, this intervener says that as to whether the facilities and services rendered by petitioners and the other defendants named in said decree, or the prices of livestock marketed therein, are as good as the facilities, services or prices at stockyards owned or furnished by non-packer owned stockyards, this intervener is without knowledge; that as to whether packer ownership of said stockyards has no effect upon the prices of livestock sold in such yards, or as to whether the competition therein is as full, free and vigorous as in non-packer owned stockyards, this intervener is without knowledge; that as to whether com- [fol. 363] mission men doing business at packer owned stockyards are not discriminated against as to office space, location of pens or otherwise, this intervener is without knowledge; that as to whether buyers of livestock are shippers and sellers of livestock, stockyards banks, cattle loan companies or other persons doing business at packer owned yards are not dominated against, this intervener is without knowledge; this intervener admits that the trustees appointed by this court of the stock of the Swift and Armour interests in stockyards held certain hearings for the purpose of ascertaining conditions at such yards, but denies that such hearings were exhaustive; admits that after said hearings were completed said trustees reported to this court that they found no violations of law in the operation of said stockyards; denies that such investigation and report shows, or has any tendency to show, that the prohibitions of said consent decree with regard to the ownership of stockyards by the defendants named in said decree are unnecessary, or that the ownership of such stockyards does not constitute an illegal advantage, or that the same could not be used as a means of restraining trade or commerce in the purchase of livestock or the manufacture or sale of meats and livestock products; denies that said report shows, or has any tendency to show, that the prohibitions of said decree against ownership of stockyards by petitioners and the other defendants named therein are unnecessary or that said stockyards cannot be used as a means of restraining trade or commerce in the

purchase of livestock or the manufacture and sale of meats and livestock products, or that there is no danger that mononopoly or restraint of trade will result from said ownership in the future.

For further answer to the allegations contained in said paragraphs 1 and 2 this intervener admits that the conditions in said packer owned stockyards have improved since said consent decree was entered, but in this connection [fol. 364] this intervener says that such improvement is entirely due to the restrictions and other provisions of said decree; and said petitioners have given and can give no adequate assurance that the conditions which prevailed at the time said consent decree was entered, with regard to the operation of packer owned stockyards, would not be restored if said decree were modified as prayed for by them.

This intervener admits that since the entry of said decree the "Packers and Stockyards Act of 1921" has been passed by the Congress of the United States, and that certain of the provisions of said act are substantially as set forth in said paragraph 3; in this connection this intervener says that the prohibitory provisions of said Packers and Stockyards Act are, in the main, merely declaratory in character and said act as a whole provides for regulation by the Secretary of Agriculture of only a part of the activities and practices enjoined by said decree; that said Packers and Stockyards Act was enacted by Congress with full knowledge of the provisions of said consent decree and was intended to supplement but not to supersede the same; that the purpose of Congress in enacting said act was to place the packers under the constant surveillance of the Secretary of Agriculture to insure obedience to the consent decree as well as to prevent the packers from indulging in unlawful practices other than those mentioned in the decree. Your intervener further alleges that said Packers and Stockyards Act applies only to the manufacture and distribution of meat products and would not apply to transactions and dealings of these petitioners and the other defendants named in said decree in unrelated lines if permitted to engage therein. Upon information and belief this intervener says that substantial changes and amendments of said Packers and Stockyards Act were obtained by petitioners and the other defendants named

in said decree on the plea that such changes and amend-
[fol. 365] ments were proper in view of the content of said decree.

This intervener denies that the regulation by the Secretary of Agriculture under said act is complete, adequate or effective except for the purposes of supplementing the provisions of said consent decree; denies that the provisions of said act render the consent decree inappropriate, unnecessary or unjust.

11. For answer to the allegations contained in paragraph 1 of Part XI of said amended petition, this intervener admits that paragraph 2 of said consent decree enjoins petitioners from owning stockyards, terminal railroads and that such railroads are a necessary adjunct to the operation of stockyards; admits that such railroads are, with respect to their rates and charges, under the control of and subject to regulation by the Interstate Commerce Commission; denies that prior to the entry of said decree these petitioners and the other defendants named therein were not guilty of any unfair practices or illegal
[fol. 366] acts with respect to the operation of said stockyards terminal railroads; on the contrary, this intervener alleges that such operation constituted an integral part of the general plan or scheme denounced by said consent decree; this intervener denies that there is no reason for the divestment of the ownership by petitioners of said stockyards terminal railroads and denies that it is in the interest of the public and of orderly and efficient marketing of livestock to permit petitioners to operate such railroads, or that the regulation and control of said railroads by the Interstate Commerce Commission affords adequate protection and guaranty against illegal or unfair practices which the public interest requires, or that the injunction, with respect to such ownership, is unnecessary or against public interest.

12. For answer to the allegations contained in paragraph one of Part XII of said amended petition, this intervener says that the prohibitory provisions of said Packers and Stockyards Act are of the character and were enacted for the purposes and with the legislative intent mentioned and set forth in paragraph 10 of this answer; denies that said Packers and Stockyards Act provides complete, equi-

table or effective regulation of meat packers and stockyards independently of the provisions of said decree, or that the same renders said decree unnecessary. On information and belief this intervener alleges that the petitioners and other defendants parties to the decree have, since the passage of the Packers and Stock Yards Act, almost completely circumvented the intent and purpose thereof and have established private stockyards wherein the great bulk of their purchases in live stock is made, and have consistently and continuously expanded and acquired further private yards in order to defeat the purposes and objects of the said Packers and Stock Yards Act, to the detriment of live stock producers and the public in general.

[fol. 367] 13. For answer to the allegations contained in paragraph one of Part XIII of said amended petition, this intervener denies that the decision in the case of U. S. v. U. S. Steel Corp., 251 U. S. 417, constitutes a new interpretation of the anti-trust laws of the United States. For further answer to the allegations contained in said paragraph this intervener says that the Attorney General, who conducted the proceedings which resulted in said consent decree, did not proceed against the defendants named therein on the theory that the mere "potential" power of said defendants constituted a violation of the anti-trust laws, but on the contrary said proceedings were instituted and conducted on the theory that said defendants were exercising and threatening to exercise the power of monopoly and were engaging in and threatening to engage in numerous other violations of the anti-trust laws of the United States. Your intervener alleges that the fact that others had been found not guilty of violating the Sherman Act does not excuse the petitioners, but on the contrary in Swift & Co. v. U. S., 276 U. S. 311, which was decided since the decision in the Steel Corporation case was rendered, the Supreme Court of the United States held that this court had the "power to construe the pleadings, and, in so doing, to find in them the existence of circumstances of danger which justified compelling defendants to abandon all participation in these businesses, to divest themselves of their interests therein, and to abstain from acquiring any interest hereafter". Your intervener denies that any changes or new interpretations of the anti-trust

laws make modification of said consent decree necessary in order to make it consistent with said laws as interpreted in the Steel Corporation case, or for any other purpose, or at all.

14. For answer to the allegations contained in paragraphs 1 to 6, inclusive, of Part XIV of said petition, this intervener alleges that as to the statistics and data contained in said paragraphs 1, 3, 4 and 6, with respect to [fol. 368] the slaughterage of cattle, calves, sheep, lambs and hogs, and with respect to the percentage of the total volume of butter, eggs, poultry, cheese, oleomargarine, lard substitutes and hides which were handled by the petitioners during the year 1929, as set forth in said paragraph 1; and with respect to the invested capital of said petitioners, percentage of profit on investment and profit per dollar of sales per year for 1920 to 1929, inclusive, as set forth in said paragraph 3; and with respect to the number of non-defendant meat packers and local slaughterers in the United States and the percentages of slaughterage conducted by them during the year 1929, as set forth in said paragraph 4; and with respect to the profits of petitioners per dollar of sales per year from 1922 to 1929, and the comparison of said profits with the profits realized by non-defendant meat packers, as set forth in said paragraph 6, and with respect to each and every one of said allegations this intervener says that it is without knowledge. Your intervener admits that the volumes of businesses mentioned in said paragraph 1 are relatively small as compared with the total business in said lines, but says that said businesses handled by petitioner constitute an important factor, which, when considered in connection with the volumes of such businesses handled by the other defendants named in said decree, are entirely sufficient not only to suggest but to constitute a monopoly, or threat of danger of monopoly if the provisions of said consent decree are modified as prayed for by said petitioners; that as to whether said petitioners act individually, severally and independently of others in the conduct and operation of their businesses this intervener is without knowledge; admits that while the volume of said businesses handled by said petitioners may be too small to enable them to dominate the meat packing business in

the United States or to control or manipulate the prices of livestock or packing house products, or to restrain trade or to suppress competition therein, or to constitute [fol. 369] a danger of such domination, control, manipulation, or restraint in the future, your intervener alleges that for the purposes of this proceeding the volumes of said businesses handled by petitioners must be considered in connection with the volumes thereof handled by the other defendants named in said decree, and when so considered the combined volumes of said businesses are entirely sufficient to enable the petitioners and the other defendants named in said decree to dominate the meat packing business of the United States, to control and manipulate the prices of livestock and packing house products, to restrain trade and suppress competition therein, and to constitute a danger of future domination, control, manipulation and restraint of trade with respect to said businesses.

That as to the allegations contained in said paragraph 2 to the effect that petitioners buy livestock in competition with all other packers and with all other buyers, and that they sell meat in competition with all of the large packers as well as the small packers and slaughterers, and as to similar allegations contained in said paragraph 5, this intervener is without knowledge. In this connection this intervener says that if said allegations are true it is wholly due to the beneficial results of the prohibitions and provisions of said consent decree, and petitioners have not given and cannot give any adequate assurance if said consent decree is modified that they will not restore the conditions charged in the bill of complaint, upon which said consent decree was based, and which were prohibited by the provisions of said decree.

15. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part XV of said amended petition, this intervener denies that on account of the so-called present day economic conditions, merchandising methods or interpretations or changes thereof said petitioners cannot monopolize the meat packing industry nor [fol. 370] restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade if the provisions of said consent decree are modified as prayed for by petitioners; that as to whether or

not petitioners are operating and conducting their business individually and severally and independently of others and not in combination, agreement or conspiracy in restraint of trade or commerce, or in any attempt to create a monopoly, this intervener is without knowledge; and for further answer to said allegations says that the same, if true, amount to nothing more than a statement to the effect that petitioners are not violating the provisions of said decree; this intervener denies that if the restrictions of said decree are removed, as prayed for by petitioners, they cannot monopolize the meat packing business, nor the wholesale grocery business, nor the chain store business, nor any other line of business, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future, but on the contrary this intervener says that if petitioners have the will to do so there is a high degree of probability that they will participate in the restoration of the conditions which prevailed among the defendants named in said decree at and prior to the time it was entered; this intervener denies that said decree has become unjust, unfair, inequitable or oppressive, and denies that it is unnecessary or lessens competition or is against public interest; denies that on account of any of the facts and conditions set forth in said petition said decree should be modified, as prayed for by petitioners, or at all; denies that the petitioners are prevented by said decree from adjusting their businesses to modern economic trends and changed conditions.

Further answering the allegations contained in said paragraph 2 this intervener says that the same are statements of mere generalities which were equally applicable at the time said consent decree was entered as at the present [fol. 371] time, and said decree was entered by and with the consent of petitioners with full knowledge of the so-called modern trends in business.

16. For further answer to the allegations contained in said Amended Petition this intervener says that prior to the entry of said consent decree of February 27, 1920, the petitioners and other defendants named in said decree were being investigated by certain departments of the Government and the Attorney General was about to institute proceedings against them under the criminal provisions of the anti-trust laws of the United States and that certain

Grand Jury proceedings were then pending; said defendants thereupon proposed that if the Attorney General would consent to such an arrangement as a complete adjustment of the various existing controversies between the United States and said defendants, and would dismiss all Grand Jury proceedings then pending and would forego further prosecutions against them, said defendants would consent to the entry of a decree by the Supreme Court of the District of Columbia, the exact terms and provisions of which decree were submitted in written form. Thereupon, the Attorney General, acting for and in behalf of the United States of America, accepted said proposal, agreed to comply and did thereafter comply with all of the conditions on which said proposal was based. Thereafter and in pursuance of said agreement, and as part and parcel thereof, the Supreme Court of the District of Columbia made and entered said decree in the exact and identical form previously agreed to by the parties; and that thereby the petitioners, and other defendants named in said decree, jointly, severally, and unconditionally agreed that they, and each of them, would perpetually and in good faith comply with all of the provisions of said consent decree. For further particulars as to the terms of said agreement said decree is hereby referred to, incorporated herein by reference and made a part hereof.

[fol. 372] This intervener further says that it represents a large and well defined portion of the public, for the protection of which the United States entered into said agreement; that the modifications of said decree now sought by the petitioners would leave this intervener in an embarrassed and disadvantageous position if compelled to pursue the remedies against the defendants named in said decree, including these petitioners, which this intervener abandoned in reliance upon said decree.

This intervener further says that in addition to being and representing a large and well defined portion of the public represented by the United States in making and entering into said agreement, it has a direct and immediate interest in the maintenance of said decree in its entirety and as a whole; that while the members of this intervener are engaged in the wholesale grocery business and are not engaged in the handling of fresh meats, it avers that each and every part of said decree is a constituent

and inseparable part thereof, and that the modification of said decree in any particular would have the effect of nullifying the agreement upon which it is based, and would seriously endanger, if not entirely destroy, said decree in its entirety.

In Swift & Co. v. United States, 196 U. S. 375, the Supreme Court of the United States had the following to say with regard to the unity of a plan or scheme which constitutes a monopoly as distinguished from the constituent elements thereof:

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. [fol. 373] But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aikens v. Wisconsin, 195 U. S. 194, 206. * * * The unity of the plan embraces all the parts" (p. 396).

17. For further answer to said Amended Petition this intervener says that by virtue of the facts hereinbefore set forth, particularly the facts set forth in paragraph 22 hereof, and of the facts hereinafter alleged, said petitioners are estopped from obtaining a modification of any of the provisions of said consent decree, have been guilty of laches and do not come into this Court with clean hands such as would justify decision by a court of equity in their favor. [fol. 374] This intervener further alleges that in July, 1919, proceedings were instituted before the Interstate Commerce Commission by this intervener alleging that the petitioners and other meat packers were obtaining preferential and discrimingtory freight rates from the railroads. These petitioners and other defendants named in the decree intervened in said proceedings and in a brief filed therein by them called attention to the fact that said consent decree had been made and entered, and stated that the defendant packers were carrying out in good faith the terms of said decree. The Interstate Commerce Commission in its decision said:

"They (the packers) assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable of the complainants than any obtainable by an order in this proceeding * * *" (I. C. C. No. 10745, June 22, 1921).

[fol. 375] Your intervener further alleges that in consenting to said decree these defendants imposed upon and sought to take advantage of this court; while consenting to said decree such petitioners believed same was invalid and unenforceable for various reasons later urged before this court; that therefore certain of these defendants have never complied with the decree but as above set forth obtained extensions from time to time until further extensions were refused; that in the first instance these petitioners caused and incited the California Cooperative Canneries, a concern dominated and controlled by Armour & Company, to attack the decree and seek to have same set aside; that only when this court refused to allow the California Cooperative Canneries to intervene for this purpose these petitioners openly attacked the decree and seek to have same declared invalid; that after the decree was declared in all respects valid by the Supreme Court of the United States these petitioners were successful in having the decree suspended through the intervention of the California Cooperative Canneries, which intervention was subsequently vacated by the Supreme Court of the United States which declared the decree enforceable and that "all obstacles to the enforcement of the decree should have been promptly removed"; it was not until such decision and only after the lapse of many years that these petitioners brought this proceeding, then alleging for the first time that the decree should be vacated or modified for the reasons set forth in their petitions.

18. Further answering said Amended Petition this intervener says that said petition does not state facts sufficient to entitle the petitioners to the relief prayed for in said petition, and that this Court is without power or jurisdiction to grant any modification of the said decree, or any relief whatsoever.

[fol. 376] Wherefore this intervener prays that these petitioners take nothing by virtue of said amended petition, but that the same be dismissed.

Breed, Abbott & Morgan, Frank K. Nebeker, Attorneys for Intervener National Wholesale Grocers' Association of the United States.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 377] In Supreme Court of District of Columbia

Equity No. 37623

Answer of Intervener National Wholesale Grocers' Association of the United States to Amended Petition of Armour & Company et al.

Comes now National Wholesale Grocers' Association of the United States, intervener herein, and for answer to the Amended Petition of Armour & Company, et al., for modification of the consent decree of February 27, 1920, says.

1. This intervener in answer to the allegations contained in paragraphs 1 to 4, inclusive, of said Amended Petition, respectfully refers to the petition, answers and decree entered in this action for the provisions thereof. This intervener further alleges that while said stipulation contained the statement quoted in paragraph 3 of said petition and while said statement was incorporated in said decree, the Supreme Court of the United States in Swift & Co. v. United States, 276 U. S. 311, expressly held that said statement in the decree did not deprive the court which entered the decree of jurisdiction, and also held that said court had power "to construe the pleadings, and in so doing, to find in them the existence of circumstances of danger which justify compelling the defendants to abandon all participation in [fol. 378] these businesses, to divest themselves of their interest therein and to abstain from acquiring any interest hereafter."

The Supreme Court held, as was stated by Mr. Justice Brandeis in United States v. California Cooperative Canneries, 179 U. S. 461, at p. 555, "that the consent decree

* * * was in all respects valid and enforceable," and at p. 559, "all obstacles to the enforcement of the consent decree should have been promptly removed."

2. For answer to the allegations contained in paragraph 5 of said Amended Petition this intervener admits that the policy of the Sherman Anti-trust Act is to prevent monopolies, combinations, agreements and conspiracies in restraint of trade and commerce; denies that said consent decree has had the effect of reducing commerce or competition in the sale of the commodities mentioned in said paragraph; denies that said decree, unless construed, modified or amended will have the future effect of reducing such commerce or competition in sale of said commodities. This intervener avers on the contrary that said decree has had the effect of stimulating trade and commerce in the sale of said commodities by enabling numerous individuals and concerns to engage in the business of manufacturing and selling said commodities to an extent and on a scale which would have been impossible if the packer defendants named in said decree had not been placed under the restraints and injunctions thereof. This intervener denies that if the consent decree of February 27, 1920, had been entered in a suit between private parties it would have been violative of the Sherman Act. This intervener alleges that the contentions made in said paragraph 5 were presented to the United States Supreme Court in the above mentioned cases and were rejected by that court and for a complete answer to these allegations reference is made to the opinions of the Supreme Court of the United States in the above mentioned cases.

[fol. 379] 3. For answer to the allegations contained in paragraph 6 of said Amended Petition this intervener denies that said consent decree was entered on supposition, denies that there have been any radical and material changes in the production, manufacture, sale and distribution of food products; admits that a keener and more active competition now exists in the purchase of livestock, meats and meat products than existed when said decree was entered and alleges that such conditions are largely due to said decree; denies that a monopoly therein cannot be acquired by petitioner alone or in combination with others if said de-

decree is modified in any essential particular; denies that the events and changes mentioned in said paragraph establish or have a tendency to establish that it will be impossible for the defendants named in said decree to acquire a monopoly in the handling of the commodities mentioned in said paragraph if they are relieved from the restraints of said decree; admits that said consent decree has served a useful purpose, but denies that it is no longer necessary for the maintenance of competitive conditions or for the purpose of preventing a monopoly in the sale and distribution of said food products; denies that any of the parts of said consent decree are inequitable or detrimental to public interest, or impose on the petitioners hardships not warranted by existing facts. Your intervener alleges that the continuance of the decree is essential in order to preserve free and open competition in food products and to protect the public generally.

4. Answering paragraph 7 of said Amended Petition this intervener denies that said consent decree prevents the petitioners from engaging in lawful businesses on the theory that the "potential power" of the defendants named in the decree was a menace, or that defendants might thereby acquire a monopoly. For further answer to this allegation and to the allegation contained in said paragraph 7 with reference to the alleged opinion of the Attorney General, [fol. 380] who conducted the proceedings which resulted in said consent decree, reference is made to the Bill of Complaint filed in said cause, from which it appears that the proceedings were instituted on the theory that the defendants named in said decree were exercising and were threatening to exercise the power of monopoly, and were engaging in and threatening to engage in numerous other violations of the anti-trust laws of the United States. Your intervener alleges that the fact that others have been found not guilty of violating the Sherman Act does not excuse the defendants in this proceeding and that the Supreme Court of the United States has held that this Court had the "power to construe the pleadings, and, in so doing, to find in them the existence of circumstances of danger which justified compelling the defendants to abandon all participation in these businesses, to divest themselves of their interest therein, and to abstain from acquiring any interest hereafter" (Swift & Co. v. U. S., supra, at p. 329).

5. Answering paragraph 8 of said Amended Petition this intervener admits that the Supreme Court of the United States commented on the mere effect of size of a concern as an element of a monopoly. But in doing so said court did not establish or lay down any new rule with regard to what constitutes a monopoly under the anti-trust laws of the United States. Further answering said paragraph 8, this intervener admits that the Supreme Court held that 45 per cent control of an industry in itself does not constitute a monopoly, but it did not hold or infer that such percentage of control would not constitute a monopoly if the power thereby obtained were coupled with such unlawful purposes as were charged in the Bill of Complaint filed by the Attorney General in this cause. This intervener says that as to whether the primary defendants named in said decree have become active competitors since said decree was entered, and as to whether they are not parties to any con-
[fol. 381] tracts, combinations or conspiracies in the violation of said decree, this intervener is without knowledge and therefore denies same.

6. Answering paragraphs 9 to 12, inclusive, of said Amended Petition, this intervener admits that since said consent decree was entered Congress has enacted said Packers and Stockyards Act, and that certain of the provisions of said act are substantially as set forth in said paragraphs of said Amended Petition; that in this connection this intervener says that the prohibitory provisions of said Packers and Stockyards Act are in the main merely declaratory in character, and that said act as a whole provides for regulation by the Secretary of Agriculture of only a part of the activities and practices enjoined by the consent decree; that said Packers and Stockyards Act was enacted by Congress with full knowledge of the provisions of said consent decree, and was intended to supplement but not supersede the same; that the purpose of Congress in enacting said act was to place the packers under the constant surveillance of the Secretary of Agriculture in order to insure obedience to the decree, as well as to prevent the packers from indulging in unlawful practices other than those mentioned in the decree. Your intervener further alleges that said Packers and Stockyards Act applies only to the manufacture and distribution of meat food products and would not apply to trans-

actions and dealings of these petitioners in unrelated lines if permitted to engage therein. Upon information and belief changes and amendments were obtained by these petitioners in this legislation on the plea that the consent decree made these changes and amendments proper.

[fol. 382] 7. Answering paragraph 13 of said Amended Petition this intervener says that said decision of the Supreme Court of the United States in the case of Wolff Packing Co. v. Court of Industrial Relations, does not deal with any question involved in these proceedings, or with any question arising from the anti-trust laws of the United States; that the sole question presented and decided in that case was whether the packing industry within the State of Kansas was so clothed with a public interest as to empower the State of Kansas to regulate the relations between packers located in that State and their employees, particularly with reference to wages and compensation of such employees. The plain meaning of the four sentences quoted in said paragraph 13 from the opinion in the case is that the danger of local monopolistic control in the preparation of foods would be slight, so long as foods were permitted to enter the State from outside sources. It is doubtless true that, as stated by the Court in said opinion, on the date said opinion was rendered, June 11, 1923, food was being produced in greater volume and variety than ever before, and that there was no monopoly in the preparation of foods. But in this connection intervener says that said decision was rendered more than three years after said consent decree was entered and while the injunctions contained therein were in full force and effect. Your intervener further alleges that following the decision in Wolff Packing Company v. Court of Industrial Relations, it made its decisions above referred to holding the injunctions of the consent decree to be justified, valid and enforceable.

8. That as to the allegations contained in paragraph 14 of said Amended Petition, concerning alleged losses sustained by the defendants named in said consent decree subsequent to the entry thereof, this defendant is without knowledge, and therefore denies same. Your intervener alleges upon information and belief that said losses in the [fol. 383] fiscal year 1921 were not due to the consent decree, but to other causes, and that this allegation is also true

with respect to the failure of Armour & Company to pay dividends. As to the allegations contained in paragraph 15 of said Amended Petition, concerning the insolvency and receivership of Wilson & Company, Inc., in 1924, and the causes thereof, this intervener is without knowledge, but alleges upon information and belief that the causes thereof were other than the consent decree.

9. Answering paragraphs 16 to 19, inclusive, of said Amended Petition, this intervener admits that Armour & Company has purchased the physical properties of Morris & Company; that proceedings were instituted by the Secretary of Agriculture and that after an extensive hearing said proceedings were dismissed; admits that during the war period the Government stimulated the production of livestock and to some extent controlled the distribution of packer products; admits that petitioner, Armour & Company, greatly expanded its packing plants; that following the war there was great financial and business depression and that thereby said petitioner's volume of business was greatly reduced, as compared with said petitioner's volume of business during the war period. In this connection this intervener says that it is informed and believes, and therefore alleges that during said war period said petitioner realized enormous profits and enjoyed unprecedented prosperity. This intervener admits that at said hearing before the Secretary of Agriculture evidence was introduced which tended to show that active competition existed in the buying of livestock and in the sale of meats, but, as this intervener is informed and believes and therefore alleges, such condition was largely due to the wholesale restraints and provisions contained in said decree. Your intervener alleges that the acquisition by Armour & Co. of the business of [fol. 384] Morris & Company renders it essential that the consent decree be maintained in full force and effect to preserve free and open competition and protect the public interest.

10. Answering paragraphs 20, 21 and 22 of said Amended Petition this intervener admits that said trustees mentioned therein conducted hearings and made said report, but says that said hearings were entirely informal and said report has no probative value in these proceedings; that in so far

as said report may be considered to have any probative value the sum and substance thereof is that it was unnecessary for said trustees to exercise the limited powers conferred upon them by the court.

11. Answering paragraphs 23 to 26, inclusive, of said Amended Petition, concerning changes in the capital stock, funded debt and corporate organization of Armour & Company, and its subsidiaries since the entry of said decree, this intervener is without knowledge and therefore denies same.

12. Answering paragraph 27 of said Amended Petition, this intervener denies that said intervener could not have obtained such a decree as that mentioned in said paragraph in a proceeding instituted in its own name and behalf. On the contrary, this intervener alleges that said decree could have been so obtained by showing that the handling of such unrelated lines, and the selling of meats at retail, were in furtherance of an existing monopoly or conspiracy, such as existed in the meat and other food industries at the time said decree was entered.

13. Answering paragraphs 28 and 29 of said Amended Petition this intervener denies that if the decree of February 27, 1920, is so modified as to permit the defendants to engage in the business of dealing in said unrelated commodities, the interveners will not thereby be subjected to any unfair or illegal prejudice; denies that said decree is [fol. 385] unnecessary to protect the wholesale grocers against the effect of said advantages in transportation; denies that the sole motive of this intervener in opposing modification is to avoid increased competition in the wholesale grocery business; and alleges that one of the reasons why the Interstate Commerce Commission refused to grant the full relief demanded in the proceeding referred to was that the Packers brought to the attention of the Commission the entry of the consent decree, represented that they were carrying out the terms of said decree in good faith, and asserted that the entry of said decree eliminated the competition to which the grocers objected and would bring about a result more favorable to the complainants than any obtainable by an order in that proceeding (62 I. C. C., Rep. 375; June 22, 1921).

14. Answering paragraph 30 of said Amended Petition this intervener says that it is without knowledge as to the truth of the allegations thereof and therefore denies same.

15. Answering paragraphs 31 and 32 of said Amended Petition this intervener states that it is without knowledge as to the truth of the allegations of facts contained therein and therefore denies the same and further denies that by reason of the facts stated in said paragraph it would be impossible for any packer, or group of packers, to establish and maintain for any length of time a monopoly in the purchase of livestock.

16. Answering paragraph 33 of said Amended Petition this intervener says that it is without knowledge as to the truth of the allegations of fact contained therein and therefore denies same but alleges that if under present conditions local slaughterers and packers, non-slaughtering packers, periodical packers, foreign killers and certain selling agencies are able to do business, this is largely due to the effects of said consent decree; this intervener verily believes and, therefore, alleges that if said decree is modified, as [fol. 386] prayed for in said petition, a large number of said manufacturers and dealers will be entirely eliminated as competitors of these petitioners and of the other powerful packers named in said decree.

17. Answering paragraph 34 of said Amended Petition this intervener denies that at said hearing before the Secretary of Agriculture in the Armour-Morris proceeding it was established, or that it is a fact that it would not be possible for any combination of packers to create a monopoly in the packing industry either for the reasons set forth in said paragraph or for any other reasons, except such reasons as arise from the continuation of the restraints provided for in said consent decree. This intervener further says that the opinions and conclusions designated as reasons in said paragraph are no more applicable today than at the time said decree was entered.

18. For answer to paragraphs 35 to 56, inclusive, of said Amended Petition, this intervener denies that radical and extensive changes in marketing conditions have taken place since the consent decree and alleges that insofar as said paragraphs correctly set forth marketing conditions at the

present time such conditions are the normal development of conditions existing at the time the decree was entered and clearly anticipated at that time; admits that since said decree was entered there have been increases in the number, size and volume of operations of chain stores and chain store organizations, and that there have been many consolidations and mergers among manufacturers and distributors of food products; admits that certain chain stores are engaged in selling meats at retail, that certain non-defendant packers are operating meat stores, and that many so-called voluntary chains have been formed. This intervener says that it has no knowledge as to the figures and statistics stated in paragraphs 37 to 56, inclusive, and therefore denies same.

[fol. 387] In connection with the allegations contained in said paragraphs 35 to 56, inclusive, this intervener says that all of the so-called trends and developments in the manufacture and distribution of foods and other commodities were in operation at the time said consent decree was entered; that the inferences drawn from said facts by petitioners are speculative and insusceptible of verification and are not correctly drawn; that even if such facts had existed at the time said consent decree was entered the same as at present they would not have constituted any defense to the Bill of Complaint filed in this cause; that said facts show on their face that under existing conditions the channels of distribution for the marketing of products manufactured by petitioners, and the other defendants named in said decree, are entirely adequate to enable said defendants to market their products; that petitioners have given and can give no assurance that if relieved from the restraints of said decree they, or the other defendants named in said decree, will not proceed to the establishment of still greater dominance in the food industries than existed at the time the suit was instituted. This intervener denies the allegation contained in paragraph 44 of said Amended Petition to the effect that the chain store organizations "prove that no defendant to this suit, or even all of the defendants to this suit, could possibly effect a monopoly or restrain trade if permitted to engage in the business of selling meats at retail, and dealing in the commodities known as unrelated lines." This intervener denies a similar allegation contained in paragraph 56 of said amended petition.

19. Answering paragraphs 57 to 61, inclusive, of said Amended Petition this intervener admits that certain of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names and manufacture part of their products under their own private brands; admits that trade-marks of individual wholesale grocers, which are in fact their [fol. 388] own trade names or brands, cannot lawfully be imitated by others, but the products so sold under particular trade-marks or brands may lawfully be and are sold by others and are susceptible of constituting an integral part of a monopoly in the handling of food products; that as to whether or not the defendants named in said consent decree have suffered substantial losses in business during recent years, this intervener is without knowledge and therefore denies same and further denies such losses were the result of the consent decree; this intervener says that the ownership of private refrigerator cars operated over public tracks by the defendants named in said decree is only one of the grounds on which the wholesale grocers oppose the removal of the restrictions contained in the decree; alleges that insofar as the Interstate Commerce Commission held that the use by the packers of refrigerator cars does not constitute an undue or unlawful prejudice to the wholesale grocer, such decision was largely influenced by the entry of the consent decree; that said wholesale grocers oppose any modification of said decree on all of the grounds alleged in the Bill of Complaint upon which said decree was based; this intervener denies that the wholesale grocers are not prejudiced under conditions existing today with respect to the building of hard roads or the development and extension of motor trucks; admits that the wholesale grocers are opposed to any modification of the decree which will enable the defendants to said decree to adopt methods or measures in violation thereof; as to the allegations that the trend toward integration may, in the future, develop to such an extent that the wholesale grocers will be entirely eliminated as a separate and distinct factor in the merchandising system, this intervenor says that it is without knowledge and further says that such allegation is a matter of pure speculation; denies that it is inequitable to permit wholesale grocers to intervene in this action for the purpose of op- [fol. 389] posing any modification of said consent decree,

and it has intervened in these proceedings solely for the purpose of asserting rights expressly mentioned in the order of this court granting it the right to intervene.

20. Answering paragraphs 62 to 66, inclusive, of said Amended Petition this intervener says, that as to the allegations contained therein concerning the attitude toward the proposed modification of the decree, of livestock growers, competitors of petitioners, commission men, traders, speculators, order buyers, market reporters and economists, this intervener has no knowledge and therefore denies same; this intervener denies that the requested modification of said decree is favored by a majority of the general public and alleges upon information and belief that the resolutions adopted by the Associations referred to in said paragraphs were instigated and prepared in whole or in part by these petitioners and that said Associations do not favor any modification of the decree directly affecting them or their members. Your intervener alleges that the general public favors the continuance and maintenance of the decree and its strict enforcement and opposes any modification thereof.

21. Answering paragraphs 67 to 76, inclusive, of said Amended Petition this intervener denies that the wholesale grocers have opposed, or that they are opposing the modification of said decree because of selfish interests or with the desire to restrict or limit competition in the particular business in which they are engaged; alleges that it is without knowledge of the facts set forth as to petitioners' businesses and therefore denies same, and further alleges that if the volume of business handled by the defendants named in said decree has been reduced by the restrictions provided for in said decree, but this has been true from the time said decree was entered and was within the contemplation of the parties at the time they entered into the agreement upon which said decree was based; admits that certain of the [fol. 390] products sold by said defendants are perishable, but as to whether or not said defendants have been confronted with the task of finding new and immediate outlets and of avoiding forced sales, or as to whether said defendants have frequently reduced their prices to chain store buyers to below prevailing market prices, this intervener is without knowledge, but does allege if that be true it is in

no way different from the common practice of numerous other manufacturers competing with one another in selling to chain stores and therefore denies same; admits that said decree prohibits the defendants named therein from engaging in the retail business and from handling lines of commodities not related to the packing industry, and that others are permitted to do so. In this connection this intervener says that the situation in these respects was within the contemplation of the parties at the time said agreement was entered into and said decree was entered. The same is true of all of the allegations contained in paragraph 75 of said petition. This intervener denies that said consent decree is against the public interest or that it restrains competition contrary to the principles of the Sherman Anti-trust Act and alleges that the decree and its maintenance in full force and effect is essential to the public interest; denies that if said decree is modified the defendants named therein will reduce prices of said commodities.

22. For further answer to the allegations contained in said Amended Petition this intervener says that prior to the entry of said consent decree of February 27, 1920, the petitioners and other defendants named in said decree were being investigated by certain departments of the Government and the Attorney General was about to institute proceedings against them under the criminal provisions of the anti-trust laws of the United States and that certain Grand Jury proceedings were then pending; said defendants thereupon proposed that if the Attorney General would [fol. 391] consent to such an arrangement as a complete adjustment of the various existing controversies between the United States and said defendants, and would dismiss all Grand Jury proceedings then pending and would forego further prosecutions against them, said defendants would consent to the entry of a decree by the Supreme Court of the District of Columbia, the exact terms and provisions of which decree were submitted in written form. Thereupon, the Attorney General, acting for and in behalf of the United States of America, accepted said proposal, agreed to comply and did thereafter comply with all of the conditions on which said proposal was based. Thereafter and in pursuance of said agreement, and as part and parcel thereof, the Supreme Court of the District of Columbia made and en-

tered said decree in the exact and identical form previously agreed to by the parties; that thereby the petitioners, and other defendants named in said decree, jointly, severally, and unconditionally agreed that they, and each of them, would perpetually and in good faith comply with all of the provisions of said consent decree. For further particulars as to the terms of said agreement said decree is hereby referred to, incorporated herein by reference and made a part hereof.

This intervener further says that it represents a large and well defined portion of the public, for the protection of which the United States entered into said agreement; that the modifications of said decree now sought by the petitioners would leave this intervener in an embarrassed and disadvantageous position if compelled to pursue the remedies against the defendants named in said decree, including these petitioners, which this intervener abandoned in reliance upon said decree.

This intervener further says that in addition to being and representing a large and well defined portion of the public represented by the United States in making and entering into said agreement, it has a direct and immediate [fols. 392 & 393] interest in the maintenance of said decree in its entirety and as a whole; that while the members of this intervener are engaged in the wholesale grocery business and are not engaged in the handling of fresh meats, it avers that each and every part of said decree is a constituent and inseparable part thereof, and that the modification of said decree in any particular would have the effect of nullifying the agreement upon which it is based, and would seriously endanger, if not entirely destroy, said decree in its entirety.

In Swift & Co. v. United States, 196 U. S. 375, the Supreme Court of the United States had the following to say with regard to the unity of a plan or scheme which constitutes a monopoly as distinguished from the constituent elements thereof:

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as dis-

tinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aikens v. Wisconsin, 195 U. S. 194, 206. * * * The unity of the plan embraces all the parts" (p. 396).

23. For further answer to said Amended Petition this intervener says that by virtue of the facts hereinbefore set forth, particularly the facts set forth in paragraph 22 hereof, and of the facts hereinafter alleged, said petitioners are estopped from obtaining a modification of any of the provisions of said consent decree, have been guilty of laches, and do not come into this Court with clean hands such as would justify decision by a court of equity in their favor. [fol. 394] This intervener further alleges that in July, 1919, proceedings were instituted before the Interstate Commerce Commission by this intervener alleging that the petitioners and other meat packers were obtaining preferential and discriminatory freight rates from the railroads. These petitioners and other defendants named in the decree intervened in said proceedings and in a brief filed therein by them called attention to the fact that said consent decree had been made and entered, and stated that the defendant packers were carrying out in good faith the terms of said decree. The Interstate Commerce Commission in its decision said:

"They (the packers) assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding * * *" (I. C. C. No. 10745, June 22, 1921).

[fol. 395] Your intervener further alleges that in consenting to said decree these petitioners imposed upon and sought to take advantage of this court; while consenting to said decree such petitioners believed same was invalid and unenforceable for various reasons later urged before this court; that therefore certain of these defendants have never complied with the decree but as above set forth obtained extensions from time to time until further extensions were refused; that in the first instance these peti-

[fol. 396] tioners caused and incited the California Cooperative Canneries, a concern dominated and controlled by Armour & Company, to attack the decree and seek to have same set aside; that only when this court refused to allow the California Cooperative Canneries to intervene for this purpose these petitioners openly attacked the decree and seek to have same declared invalid; that after the decree was declared in all respects valid by the Supreme Court of the United States these petitioners were successful in having the decree suspended through the intervention of the California Cooperative Canneries, which intervention was subsequently vacated by the Supreme Court of the United States which declared the decree enforceable and that "all obstacles to the enforcement of the consent decree should have been promptly removed"; it was not until such decision and only after the lapse of many years that these petitioners brought this proceeding, then alleging for the first time that the decree should be vacated or modified for the reasons set forth in their petitions.

24. Further answering said Amended Petition this intervener says that said petition does not state facts sufficient to entitle the petitioners to the relief prayed for in said petition, and that this Court is without power or jurisdiction to grant any modification of the said decree, or any relief whatsoever.

Wherefore this intervener prays that these petitioners take nothing by virtue of said amended petition, but that the same be dismissed.

Breed, Abbott & Morgan, Frank K. Nebeker, Attorneys for Intervener National Wholesale Grocers' Association of the United States.

[fols. 397 & 397½] *Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.*

[fol. 398] In Supreme Court of District of Columbia

Motion to Dismiss by Counsel for National Wholesale Grocers' Association — Page 45 of the Official Stenographic Report Tues. Oct. 7, 1930

Mr. Breed: If your Honor please, I wish to make a motion, to renew our motion to dismiss the proceeding, so as to

get clearly before the Court and on the record a summary of our grounds.

The Court: I can not entertain that motion at present. A motion has already been filed to dismiss. I will not entertain another motion. You may take an exception.

Mr. Breed: I would only suggest to the Court, I recognize the point of the ruling. Would it aid us in the trial, instead of having us make the motion at the time when the evidence was offered? We might make it now, state the grounds that I have to state, which we will have to renew at the time.

The Court: I have already ruled on the motion to dismiss the petition to modify the decree. I will not hear that motion again. I will hear, of course, proper objections to evidence, when it is offered.

Mr. Breed: I take an exception.

[fol. 399] OBJECTIONS BY COUNSEL FOR NATIONAL WHOLESALE GROCERS' ASSOCIATION TO THE TESTIMONY — PAGES 88 AND 89 OF OFFICIAL STENOGRAPHIC REPORT. Oct. 7, 1930

Mr. Breed: If the Court please, before the witness answers, I presume this is the proper time for me to enter my objection to the testimony.

The Court: Very well.

Mr. Breed: If the Court please, I object to the testimony on the ground that it is immaterial, irrelevant, and that it is improper for this Court to receive any testimony under the terms of this petition.

The grounds of my objection are as follows:

1. That the United State Supreme Court has sustained the decree of February 27, 1920, as a final enforceable judgment, and the term of Court at which the decree was entered expired long prior to the filing of these petitions.

2. That the petitions do not——

The Court: Was not that all covered by your motion to dismiss the petitions?

Mr. Breed: No, there are several additional reasons.

2. That the petitions do not state facts sufficient to give this Court any jurisdiction.

The Court: I will not hear that, sir. That has already been passed upon. I cannot permit that.

Mr. Breed: May I just recite it on the record quickly?

The Court: I will not permit unnecessary delay in the progress of this petition. It is contrary to the practice of a [fol. 400] court of equity.

Mr. Breed: If the Court please, I am merely stating the grounds of my objection.

The Court: I do not think so. I think you are going through the objections to the petition which have already been disposed of. I will not hear anything further unless you have something which is a real objection to evidence. What is your objection to this question?

Mr. Breed: May I state my objections on the record in order that they may be the basis for the ground of my objection?

The Court: You may file it in writing.

Mr. Breed: I may file it?

The Court: Yes. Proceed, Mr. Hogan.

Mr. Breed: May I except to the Court's ruling?

The Court: Yes. Make a note of the fact that the Court declined to hear it because they are not proper objections to the evidence.

Mr. Breed: But your Honor allows me to file them?

The Court: Yes.

[fol. 401] OBJECTIONS TO TESTIMONY MADE BY COUNSEL FOR NATIONAL WHOLESALE GROCERS' ASSOCIATION APPEARING ON PAGES 274-277, INCLUSIVE, OF THE OFFICIAL STENOGRAPHIC RECORD Oct. 8, 1930

Mr. Williamson: If your Honor please, if you care to at this time, I would like to suggest that the proposed objections heretofore referred to on page 89 of the record be marked for identification and then I can move that they be deemed as read on page 89 of the record where the offer was made.

The Court: I think those were your objections to the evidence of Mr. Daly and I overruled the objection.

Mr. Williamson: For the sake of the record I will ask that these objections be marked for identification, and I

would like to move that they be deemed as read at the proper point in the record.

The Court: It is not necessary that they be marked for identification. You have made the objections and I have overruled them. The record will show that.

Mr. Williamson: May I ask this? The record does not now show any of the grounds stated on this paper as being the grounds of the objection.

The Court: You have made these objections and I have overruled them. I will hand them to the Reporter and he can embody them in the transcript, if that is what you wish.

Mr. Williamson: Very well. Then I would like to say this; rather than to repeat those objections to any other testimony or evidence offered by the petitioner, I would like the record to show that the same objections are made to any and all such testimony or evidence as may be offered by the petitioner.

[fol. 402] The Court: I understand that your objections are made to any other such testimony and the same ruling is made.

(The objections submitted by Mr. Williamson above referred to are as follows:

"In the Supreme Court of the District of Columbia

"Equity No. 37623

"United States of America

v.

"Swift & Company et al.

"The testimony of the witness John F. Daly is objected to on behalf of the intervener, National Wholesale Grocers Association, as incompetent, irrelevant and immaterial, in that

"1. The United States Supreme Court has sustained the decree of February 27, 1920, as a final and enforcible judgment and the term of the court at which said recree was entered expired long prior to the filing of the petitions in this proceeding.

"2. The utmost limit of the Court's jurisdiction is to act in respect to issues between parties actually and properly before the Court. The power and duty to act in respect to

any modification of the consent decree rests exclusively in and with the Attorney General who has no power or right to delegate or attempt to delegate such power and duty to this Court. Therefore, the Court is without jurisdiction to hear or receive any evidence herein.

"3. The petitions do not state facts sufficient to give this Court any jurisdiction in that said petitions do not allege that the parties to the equity proceeding resulting in the consent decree, including the plaintiff—the Govern- [fol. 403] ment of the United States—have consented to the modifications requested in the petition, or any of them.

"4. The Court is without power or jurisdiction to grant the relief prayed for in said petitions or any relief, or to hear or receive any evidence herein because

"(a) The said petitions fail to allege that all of the parties to said consent decree have consented to the modification of said decree and on the contrary the United States of America, plaintiff herein, has filed answers to said petitions and by the Attorney General is present in Court for the stated purpose of opposing modification of said consent decree.

"(b) The economic facts, or alleged facts set forth in said petitions are immaterial and irrelevant.

"(c) It appears from the opening statement of counsel for the petitioners that the proof which will be offered by petitioners would not constitute any basis for modification of said decree.

"(d) The consent decree is a contract which has been sustained by the United States Supreme Court and can not be modified except by the express consent of all the parties to said decree or said contract.

"(e) The proceedings in equity against the petitioners and other defendants which result in the consent decree of February 27, 1920, were based upon alleged violations of the anti-trust laws of the United States, and to prevent future violations thereof, and that the allegations of the petitions herein clearly indicate that the petitioners desire both to modify the decree so as to continue the operations prohibited by the decree and also to extend their operations from meat food products into other unrelated lines and to

enlarge and increase the monopoly prohibited by the terms [fol. 404-838] of the consent decree and in violation of Sections 2 and 4 of the Act of July 7, 1890, and statutes supplementary thereto.

"5. On all of the grounds mentioned in the actions to dismiss the petitions herein made by the intervener, National Wholesale Grocers Association."

[fol. 839] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity. No. 37623

UNITED STATES OF AMERICA, Plaintiff,

v.

SWIFT & COMPANY et al., Defendants

Statement of Evidence

In the trial of the above entitled cause, upon the amended petitions of the Armour and Swift groups of defendants for modification of the consent decree herein entered February 27, 1920, and answers to said petitions, which trial was had, beginning October 6, 1931, before the Honorable Jennings Bailey, one of the Justices of this Court, sitting in equity without a jury, the evidence taken, so far as the same is pertinent to the issues presented upon an appeal herein now pending to the Supreme Court of the United States, was in substance as follows:

During the course of the opening statement on behalf of the appellant, government counsel made the following statement to the Court:

Mr. Teegarden: If the Court please, introductorily, at least, the position of the Government at this stage of this long litigation cannot be better expressed than in the words [fol. 840] of the Attorney General himself in a letter which he addressed to the President of the Senate under date of July 11, 1930.

I shall read a short extract or two from that letter:

"With respect to the attitude of this Department toward the petitions of Armour & Company and Swift & Company for modification of the Consent Decree, I have declined to entertain any suggestion that I stipulate for any modifi-

cation of this decree. I have taken the position that the decree, although entered by stipulation and consent, is a judicial decree to be dealt with as such; that either by virtue of the clause at the foot of the decree reserving jurisdiction, or by virtue of general equity powers, or both, the Court has jurisdiction to entertain a petition for modification on a proper showing; that because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the court, and no modification of the decree made unless on such a judicial hearing and without any stipulation by, or consent from, the United States the evidence presented justifies, upon application of accepted principles of law and equity, some modification."

With reference to the procedural policy of the Government in this trial, the Attorney General further says:

"It is my intention to present to the court every justifiable argument and fact which tends to the conclusion that the decree should not be modified. I have no doubt that those who are interested in obtaining modification will present to the court all the evidence and arguments which tend to support their position; and in this way it is believed the facts relevant to the determination of this important matter can most clearly and expeditiously be presented to the court."

The Court thereafter referred to the above quoted statement of the Attorney General and the following occurred:

273-74* "The Court: Mr. Teegarden, yesterday you read from a letter of the Attorney General which is to be found in the record on page 69. I want to be sure that it is properly set forth in the record."

"Mr. Teegarden: Suppose, if the Court please, I bring the Court a mimeographed copy of the letter."

"Mr. Hogan: May we stipulate that Mr. Teegarden will furnish the Court with a copy of the Attorney General's [fol. 841] communication in full and the Court may consider that as the communication that was made a part of the record?"

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*Marginal numbers refer to pages in stenographic transcript of testimony

"The Court: I think I understand fully the Government's position, and as I read this, it concedes that the Court has jurisdiction, upon a proper showing, to modify the decree."

"Mr. Teegarden: That is our very frank position, your Honor."

The following evidence was received in behalf of the petitioning defendants:

(1) JOHN F. DALY, Assistant Chief Statistician, Division of Manufactures, United States Bureau of the Census, Department of Commerce, gave testimony as follows:

87-90 The Division of Manufactures compiles and publishes biennially statistics relating to manufacturing establishments throughout the United States, having products of $5,000 or more, value at the factory. This has been done quinten-ially from 1905 to 1919, and bien-ially since 1921. The report for 1927 is the last available, that for 1929 being now in process of completion.

92-96 Petitioners' Exhibit 1 is a summary of such information by industry groups and industries, and pages 11 to 13 show it for the group comprising food and kindred products. The figures here tabulated are explained in the introductory pages.

They show a total of 49,787 establishments for
108 1927 (which are merely separate plants, not separately owned concerns) in this group, with a total product valued at $11,015,860,000. Of these, 11,774 establishments manufacture edible animal products with a total product of $4,563,036,000, and 38,013 manufacture vegetable products and beverages with a total product valued at $6,452,824,000.

Petitioners' Exhibit No. 1 does not include any figures relating to farm products sold in the condition
90 [fol. 842] grown and not subjected to manufacture. The figures relating to the value of products represent selling value at the factory. (Petitioners' Exhibit 1, p. 4.)

97-102 Petitioners' Exhibit 2 contains a detail of the information summarized in Exhibit 1 with reference to the slaughtering and meat packing and related industries, and its figures are also explained in the opening

pages. On pages 6 and 13 it summarizes such information as follows:

Table 1.—Summary for the United States 1919 to 1927 (Data for Establishments with Products under $5,000 in Value Included for 1919, but not for Subsequent Years)

Year or period	Number of establishments	Cost of materials, supplies, fuel, and power	Value of products
1927	1,250	$2,663,740,403	$3,057,215,718
1925	1,269	2,625,192,435	3,050,286,291
1923	1,397	2,176,010,241	2,585,804,140
1921	1,184	1,868,198,302	2,200,942,072
1919	1,304	3,782,929,533	4,246,290,614

Table 6.—Animals Slaughtered—Number, by Kind, for the United States, 1919 to 1927

Kind	1927	1925	1923	1921	1919
Beeves	10,724,823	10,853,921	10,178,496	8,263,575	10,818,511
Calves	5,476,707	5,775,640	5,100,012	4,314,850	4,395,675
Sheep and Lambs	14,388,643	13,616,405	13,193,856	14,767,770	13,497,300
Hogs	47,492,302	48,072,511	57,018,292	40,726,780	44,520,726

The census statistics relating to slaughtering and meat packing shown in Petitioners' Exhibit 2 do not include any figures with reference to the slaughter of animals on farms and ranches or any figures as to slaughtering and meat packing establishments whose products has a value of less than $5,000 per year at the factory, or any figures of establishments slaughtering exclusively for the retail trade, or any figures of establishments engaged exclusively or principally in the manufacture of sausage or sausage casings. (Petitioners' Exhibit 2.)

[fol. 843] Petitioners Exhibit 3 is a statement of
102-03 meat packing schedules, according to value, 1927, specially compiled in the Bureau, showing by states and total for the United States the number of plants having total products in the five value classes there shown, e.g., of the total of 1,250 plants, 64 have total products ranging from $5,000 to $20,000; 267 from $20,000 to $100,000; 429 from $100,000 to $500,000; 163 from $500,000 to $1,000,000; and 327 with total products of $1,000,000 or more.

Petitioners' Exhibit 3 also shows the distribution of slaughtering and meat packing establishments by states and discloses that there are such establishments in every state of the United States with the exception of Vermont, and that the number of such establishments ranges from

one in the state of New Mexico to 152 in the state of Pennsylvania. (Petitioners' Exhibit 3.)

Petitioners' Exhibit 4 also compiled in our Bureau shows the 1921 and 1927 slaughtering and meat packing establishments classified as follows according to the value of products per year:

Production	1921	1927
$5,000 to $20,000	142	64
$20,000 to $100,000	304	267
$100,000 to $500,000	360	429
$500,000 to $1,000,000	112	163
$1,000,000 and over	266	327
	1,184	1,250

(Petitioner's Exhibit 4.)

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(2) CLARENCE E. BATSCHELET, Geographer in the
114 Bureau of Census, gave testimony as follows:

115, 119 Petitioners' Exhibit 5 is a map showing geographical location and distribution throughout the states of the United States of the 1,250 meat packing establishments as shown in Petitioners' Exhibits 2 and 3. Small dots represent each one plant, while large dots indicate cities having more than 10 plants, the number of plants so located being in each case shown in parentheses at the side.

[fol. 844] Petitioners' Exhibit 5 shows that in the year 1927 there were 21 slaughtering and meat packing establishments at San Francisco; 11 at Denver; 11 at Omaha; 11 at Kansas City; 29 at St. Louis; 57 at Chicago; 12 at Indianapolis; 11 at Louisville; 36 at Cincinnati; 21 at Detroit; 21 at Cleveland; 20 at Pittsburgh; 29 at Buffalo; 34 at Baltimore; 34 at Philadelphia; 18 at Brooklyn; 40 at New York and 16 at Boston.

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121 (3) CHARLES A. BURMEISTER, Senior Agricultural Economist in the Livestock, Meats, and Wool Division of the Bureau of Agricultural Economics, Department of *Commerce*, gave testimony as follows:

123 The Bureau of Agricultural Economics collects and disseminates agricultural information regarding the production of agricultural products, market prices, and various kinds of statistical data relating to production and marketing of agricultural products.

123-129 Petitioners' Exhibit 6 is a map showing the locations throughout the United States of stations maintained by the Bureau, number of personnel there employed, leased telegraph lines, and other communication services maintained by the Bureau.

Petitioners' Exhibit 6 shows that the Bureau of Agricultural Economics on January 1, 1930, had 2,403 employees, of which 1,029 were located in Washington and 1,374 in the field outside of Washington; that the Bureau operates 10,579 miles of leased telegraph wires and employs 70 telegraph operators at 48 separate offices.

129-132 Petitioners' Exhibit 7, "Statistics of Meat Production, Consumption, and Foreign Trade in the United States, 1900 and 1929," is an official publication released by the Bureau in April, 1930.

145 The figures therein relating to livestock slaughtered under federal inspection are furnished by the Bureau of Animal Industry, and are compiled from the reports of its official inspectors stationed in slaughtering [fol. 845] plants subject to the Meat Inspection Act of June 30, 1906. The figures relating to total slaughter, as well as those relating to exports, imports, and consumption of meats and meat products represent estimates by the Bureau, on the basis of information available, as explained on pages 1 and 2 of this Exhibit.

Petitioners' Exhibit 7 also shows the relation between Federal inspected slaughter and total slaughter in the United States by years from 1920 to 1929, and discloses that during the year 1929 the following relation existed between Federal inspected slaughter and total slaughter:

Livestock	Federal inspected	Total
Cattle	8,324,000	12,241,000
Calves	4,489,000	8,313,000
Sheep & Lambs	14,023,000	18,048,000
Swine	48,445,000	74,945,000

Petitioners' Exhibit 7 further shows that the export of all meats, excluding lard, from the United States decreased

from 2,169,000,000 pounds in 1919 to 1,089,000,000 pounds in 1920, 775,000,000 pounds in 1922, 592,000,000 pounds in 1925 and to 407,000,000 pounds in 1929. Petitioners' Exhibit 7 also shows that the per capita consumption of beef in the United States has decreased from 63.1 pounds in 1920 to 51.4 pounds in 1929; that the per capita consumption of pork, excluding lard, was 60.5 pounds in 1920 and 72.8 pounds in 1929.

152-154 Petitioners' Exhibits 8 and 9 are report forms used in the Bureau of Animal Industry in gathering and reporting information as to livestock slaughtered under federal inspection.

133, 165-196 Petitioners' Exhibit 10 shows a comparison for the years 1920 to 1929 of livestock slaughtered and meat and lard produced therefrom by the four leading meat packing concerns and their respective subsidiaries, as compared with the estimated totals.

222 [fol. 846] These totals are the same as those included for the same years in Petitioners' Exhibit 7, and from the same sources, while the totals for the four packer groups are based upon figures gathered by the Bureau of Animal Industry from federal inspection, as above explained. The figures as to Armour & Company include the business of Morris & Company, both prior and subsequent to the merger of those two interests in 1923.

172 The market news service with regard to the live stock industry comprises market information on the supplies and prices of live stock and supplies and prices of meats, also wool. This information is collected during all hours of trading at the various markets and is disseminated as rapidly as it can be obtained; that is, as fast as a reporter obtains information regarding market conditions and prices, he prepares a brief report which is made available to the public as quickly as possible by all modern means of news dissemination. At Chicago, which is the world's largest live stock market, one of our men reports for duty at 4 o'clock in the morning and his duties are to get in touch with railroad officials of the railroads bringing live stock into Chicago and in collecting them he

173 obtains information as to the number of cars of live stock that have arrived or are due to arrive since the closing hour of the preceding day; that is, 3 o'clock; that is, those that have arrived and those that will arrive

up to 3 o'clock of the current day. He gets information from them as to these prospective arrivals and from the information he has as to probable receipts by truck and other information, he estimates the probable daily receipts of each kind of live stock that will arrive at that market. He starts at 4 o'clock and releases the information at 6 o'clock by telegraph over our leased wire telegraph system to all of our other offices and it is posted on the blackboard of the exchange at each market; that is, the building in which the various agencies operating on the market have [fol. 847] their offices. This information is also posted on boards out in the yards for the benefit of traders who do not have time to go into the exchange building, and it is sent by commercial telegraph to those people who
174 subscribe to the service rendered by the telegraph companies. It is also broadcast by radio but not at 6 o'clock in the morning, a little later in the day. That is done by various broadcasting stations. At six of our markets, or at six of the stations where we have representatives, our own men do the broadcasting from remote control microphones stationed in their offices or in the exchange building where their offices are located.

176 At 7 o'clock in the morning, if the man who made the estimates of receipts gets additional information which necessitates revising the estimate that was released at 6 o'clock, he sends out a revised estimate.

At most of these markets, trading begins at 8 o'clock in the morning and as soon as enough sales have been made or enough activity has been indicated as to how the trading will be conducted, our market reporter who is reporting the hog market will prepare what we call a hog market flash. This is put on the wire at 8:30, the first one, or around 8:15 or 8:30, and then the second hog flash which gives
177 further details regarding the development of trading in the hog yards is compiled at 9:15. About that time, 9:15, there is a first flash on the cattle market and also on the sheep market giving opening trading, whether trading is active or slow, whether the prices are higher or lower than the previous day. At 10:30 a report is filed on the wire giving detailed quotations, bid or offered, in all the different branches of the live stock market; that
178 is, on cattle, hogs and sheep. I mean by this prices showing actual sales. The first report of detailed

quotations by classes and grades, different weight groups, is filed around 10:30 at Chicago, and at 11 o'clock at the [fol. 848] other markets like East St. Louis, Kansas City, Omaha and St. Paul.

At 11 o'clock at Chicago, we send out a report of
179 the estimated receipts to arrive the following day.

That is really an intention report; that is, farmers or shippers intend to load so many carloads of live stock for tomorrow's market and the purpose of this report is to let them know what the condition is so that they can govern their shipments and hold them back or send them forward according to whether the market is favorable or not. Around one or one-thirty the closing reports are prepared. This gives the prices that prevail, the range of prices on each segregation that we make either by grade or by weight, the prices that were paid during the day and if there have been any changes in trading since 10:30
180 when the first report of that kind was filed, that will be shown on this report which is sent out around 1:30 or 2 o'clock. This price information is published with regard to all the various classes and grades and weight groups of live stock that are sold on the particular market from which the report is issued or sent out.

After the close of the market the reporters pre-
181 pare a detailed report describing what occurred during the day at their particular market and this report is mimeographed and sent out by mail to those who desire to receive it. An abbreviated detailed report is furnished the various newspaper associations that send out information to the different papers throughout the country. These reports are furnished to the public free of charge and last year we sent out from all offices, all told, about 5,000,000 mimeographed reports.

The first use of radio for disseminating market
182 news was made in December 1920, when three stations did some experimental work in sending out market reports using the radio telegraph; that is, a code [fol. 849] system of transmission. Then in 1921, or beginning in 1921 with the development of the radio, ex-
183 periments were made in broadcasting radio reports.

From these three stations in 1921, the number increased to 65 in 1922, 85 in 1923, and 92 in 1924. From 1924 to 1928, the growth was much slower, during the last

year having 106 stations and in 1929, 110 stations.
185 Petitioners' Exhibit 11 is a document of 56 pages issued by the United States Department of Agriculture, containing the crop and market news radio broadcasting schedule of the Bureau of Agricultural Economics for the year 1929. In the introductory statement to this exhibit, the following statement is made:

A few of the reasons behind this extensive service of broadcasting crop and market reports are: (1) radio gets the reports to those who want it while the information still has market value. (2) Radio puts the information into the hands of the farmer in his home no matter how isolated he may be. (3) Radio has placed producers on an even trading basis with buyers.

Ninety of the 110 radio broadcasting stations used by the Department broadcast information on live stock.
186 The broadcasting is done at a regular hour each day, and, of course, the radio listener gets that either by his experience in tuning in or from the schedules that are published in his local paper. The Department has two kinds of market reports on meats; one is a monthly report on the amount of meat in storage and the other is daily reports of trading and prices, and then a weekly review of what occurred in the market during the week, the weekly review being published at the end of the week in mimeograph form. These reports are sent out to the people who request them. The Bureau compiles a report once a
187 month showing the quantities of frozen beef, pork, lambs and mutton, dry salt pork, pickled pork and lard in storage, held in warehouses owned by packers and in the public storages.
[fol. 850] In addition to publishing the current facts each day or week, the Bureau disseminates information of an analytical or interpretative nature; that is, there are employees who are trained in economic analysis who analyse all these facts and endeavor to interpret them as to what they mean with respect to the position of the industry and the probable developments that will occur as a result of the existing conditions. This information consists
188 of price situation reports, monthly analysis of market conditions, an analysis of all facts regarding the current and potential supplies, price movements, and exist-

ing and probable demands for meats and for these various products on which the Bureau reports prices. The Bureau makes what is called a pig survey twice a year, in June and in December, in which it arrives at an estimate as to the probable decrease or increase in the number of pigs raised as compared with the previous year. The information is obtained through the cooperation of the Post Office Department by sending out postcards through the rural mail carriers. Each rural mail carrier is supposed to deliver ten of these cards on which there are questions regarding the number of pigs raised, or rather the number of sows that farrowed and the number of pigs raised and saved. The mail carrier is supposed to deliver these cards at random to farmers living on his route and he collects the cards and they are sent into the field offices of the Bureau. Tabulations are made and from the statistics that are obtained the Bureau is able to make estimates as to the increase or decrease in the number of pigs saved. We compile
189 information relative to the lamb crop once a year, and compile and make estimates as to the number of cattle on feed at different times of the year and the number of sheep and lambs on feed. These are compiled at periodic intervals at a time when the information is believed to be most useful to the live stock producer. Infor-
[fol. 851] mation is also collected and disseminated on fruits and vegetables and grains and dairy products, eggs and poultry.

The first appropriation made for live stock news
190 service was $65,000, which was appropriated in 1916. The expense of the news service in 1920 was $151,581 and $468,800 in 1930. During the last ten years there has been an increase in the use of the leased telegraph
191 wire and the number of news reports sent out have increased very materially.

Regarding the daily supplies of fresh meat in the large centers like New York City, we obtain reports as to the carloads of meat that come into that city from other points. This information is obtained from receivers of those meats, large meat distributors, and then we have information as to the slaughter in the city which information is filed or obtained from the Federal Meat Inspection Service. We have men going into what are called the coolers of the meat sellers in the various cities. That is done in the centers

where we maintain the market reporting service, namely, Boston, New York, Philadelphia, Chicago and San Francisco.

Petitioners' Exhibit 12 is a specimen copy of the mimeographed daily report released by the Department from Bos-
ton, New York, Philadelphia and Chicago regarding
195 live stock and wholesale meat.

An order buyer as commonly referred to at a public market is an individual who acts as an agent for some concern that desires to buy live stock. For instance, a packer in the East, or a slaughterer in the East, operating a packing plant at Philadelphia purchases supplies at St. Louis or Chicago. He does not have his own employee at that market, but he instructs a man who is in the business of buying live stock for other people and gives him an order to buy certain kind of live stock and informs him as to the price he expects to pay. In other words, he is an agent for someone else who wishes to buy live stock. The commis-
[fol. 852] sion man, the man who represents the seller, is engaged in selling live stock for shippers who consign live stock to the market. Other sellers are speculators who buy live stock or who engaged in trading in live stock; that is, they have bought live stock from one individual and are endeavoring to sell it to someone else. A packer buyer is usually employed on a salary by the packer. The order
buyer usually operates on a commission. There is,
197 also, of course, a trader who is on the buying side.

Then there are commission men who buy for customers in the country. Stockers and feeders are animals bought for shipping back to the country for further grazing or finishing, and a commission firm may have an order from a farmer who desires to buy a carload of cattle for feeding and he is then on the buying side of the market.

Petitioners' Exhibit 14 is a mimeographed copy of the Bureau's wholesale meat report and live stock report on the Chicago market for September 2, 1930.

Petitioners' Exhibit 15 is a mimeographed copy of the Bureau's weekly review of meat trade conditions at Chicago and New York.

Petitioners' Exhibit 16 is a mimeographed copy of the Bureau's monthly report dated August 1, 1930 relating to cold storage holdings of fresh and cured meats. This re-

port informs those who are buying and selling these
199 products as to the supplies of these products that are available on that date, indicates whether the supplies are large or small as compared with previous periods and on the basis of that information buyers and sellers can formulate an idea as to what price they should pay or receive for these products.

Petitioners' Exhibit 17 is a mimeographed copy of the Bureau's Bulletin for August 1, 1930 showing stocks of meats in cold storage and in meat packing establishments [fol. 853] at Chicago, Boston, New York and Philadelphia.

Petitioners' Exhibit 18 is a mimeographed copy of Bureau's Bulletin for July, 1930 showing the average wholesale prices of fresh and cured pork products and lard at Chicago and New York.

Petitioners' Exhibit 19 is a mimeographed copy of the Bureau's report for July 1930 showing receipts and disposition of live stock at 65 public markets.

Petitioners' Exhibit 20 is a mimeographed copy of the Bureau's report showing animals slaughtered under Federal meat inspection during the fiscal year ended June 30, 1930.

Petitioners' Exhibits 22 to 27, inclusive, all dated September 2, 1930, are copies of Bureau's radio releases for that date showing the time of releases and the character of information disseminated by the radio regarding live stock receipts and prices at public markets.

208 The Bureau also prepares special reports for the various press associations that serve the newspapers, like the Associated Press, the International News Service and the United News Service.

210 There is considerable live stock sold direct from the producer to the slaughterer at points other than public stock yards and that is commonly designated as direct selling or direct buying. We opened an office in Des Moines, Iowa, which was put into operation last month, the second of September, I believe, in which information is collected from packers who are operating in that state; that is, in the state of Iowa and southern Minnesota, who are buying hogs direct from farmers rather than on public stock yards. We are collecting information as to supplies and as to prices being paid and disseminating that from our Des Moines office. The direct buying of live stock has

[fol. 854] grown very materially in recent years, particularly in the case of hogs. There has not been much change in regard to cattle or sheep.

The telephone is used very extensively by people who have telephone connections with our branch offices. Particularly in a market for instance, like Chicago, we
211 get numberous telephone calls all during the day's trading. At Chicago, for instance, we have 10 trunk lines coming into our switchboard. Around the opening of the market, during the first hour of trading, there will be numerous calls coming in. Most of those calls, practically all of those calls, are requests for information as to receipts and how the market is opening. So the girl, instead of asking them what they want or whom they would like to speak with, just calls out what the information is that has been supplied here. For instance, she will tell what the receipts are, without any request.

213 There have been no changes in news dissemination methods other than the radio since 1920, other than that the service has been greatly expanded by opening a number of new offices that were not operated at that time, covering more markets, expanding the type of service, giving more information of certain kinds, giving more detailed information, regarding classes and grades and weights. The scope of our service has been limited entirely by the appropriations available for carrying it on.

215 About the only private service is some of the markets where local newspapers will have reporters who come out and get their information. But they get most of that information from our men rather than going out into the yards and getting it themselves. At some of the markets there are live stock market papers and the reporters for those papers usually visit our office and confer with our representatives before they go back to their offices to write their news stories. In fact, one of these men [fol. 855] has a desk at one of our offices where he comes and sits and gets the information.

218 We have two representatives at our Des Moines office. These buying points are scattered out all over the state. There are 28 concentration points—26 or 28 concentration points in the state. Our men have gone around and interviewed these buyers. There are certain organized selling agencies in the state also. We have made

arrangements with those buyers and sells to report
219 to us every day by telegraph. One of these two representatives travels, makes a trip each week, going around visiting these fellows checking up. There are cooperative selling agencies operating in Iowa. They sell the hogs for the farmers through these cooperative agencies.

235 I have an idea as to the ratio between private buying and buying on the public stock yards. I have checked this in the last two days. It is approximately 40 per cent hogs last year were bought direct.

236 If the packers were in control of the stock yards they would not also be in control of the sources of information concerning the prices on which they relied or on which the Government relied.

236-242 [fol. 856] (4) MORSE SALISBURY, Chief of the Radio Service in the United States Department of Agriculture, testified as to the nature of departmental broadcasting programs, in which information arising from the Department's investigations is disseminated to the general public. Petitioners' Exhibits 28, 29 and 30 furnish illustrative examples of the programs so broadcast.

242 The information thus disseminated relates to agricultural topics, market conditions and outlook and was inaugurated experimentally on October 2, 1928,
239 through a network of 17 middle western and southwestern stations. There is a distinction between this type of broadcasting and the type described by the previous witness, Mr. Burmeister. The type that he described is daily quotations and statistics of market supplies chiefly. This type of information that we put on the network to go all over over the country from Washington is what might be called situation and outlook information. Those are technical economist's terms 'situation' applying to a description of the factors underlying a particular status of the market at any particular time; 'outlook' pertaining to factors which may influence the markets in future, which may have
237 any effect upon prices. The broadcasting is now
239-40 done through 38 radio stations and approximately five million radio receiving sets are within the range of these stations.

(5) WILLIAM L. AUSTIN, Chief Statistician for Agriculture in the Bureau of Census, Department of Commerce, testified:

The government has taken a census of agriculture every 10 years since 1840, and every five years since 1925. Petitioners' Exhibit 31 contains summarized statistics, by states, gathered from this census for the year 1925, and pages 3, and 6-13, show tabulations of farms and farm property for the years 1910, 1920, and 1925. This shows [fol. 857] 6,448,343 farms in the United States in 1920; and 6,371,640 in 1925. Of the latter figure, 2,462,608 were operated by tenants, and 40,700 by employed managers.

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247 (6) DR. O. C. STINE, Agricultural Economist in Charge of the Division of Statistical and Historical Research, Bureau of Agricultural Economics, Department of *Commerce,* testified:

My Bureau collects and publishes for the public under the title, "Crops and Markets," estimates of production of agricultural food products in the United States, based on the five and 10 year censuses, and annual reports from farmers as to their production of crops and livestock. Petitioners' Exhibit 32 (offered only as to pp. 350, 351, and 373) is an example of this publication for the month of September, 1929. Page 373 in this issue shows estimated gross and cash income from farm production, 1924 to 1928, in dollar values. Gross value as here used represents total production multiplied by average prices per unit of the product at the farm. Gross income represents that part of the product sold or used on the farm, as food or clothing, multiplied by the average unit farm prices. Cash income covers only that part of the product which
335 is sold. Page 350 shows receipts and disposition of livestock for the month of August, 1928 and 1929, by livestock markets in the United States.

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252 (7) H. H. HULBERT, of the Division of Cooperative Marketing, in the Federal Farm Board, testified:

This Division was transferred from the Department of Agriculture to the Federal Farm Board by executive order

upon the latter's organization. This Division, both before and after that time, has gathered data with respect to co-
[fol. 858] operative farm organizations, their names, where they operate, and what they deal in. Petitioners' Exhibits 33 to 37, inclusive, are tabulations of quantities of live-stock by head and value handled by farmers' cooperative associations operating on terminal markets during the period of time therein indicated. These associations are composed of members who are producers and in addition to the products of such members can handle products for non-members up to 50% of their respective totals.

Petitioners' Exhibit 33 consists of a tabulation showing cattle handled by cooperative live stock terminal sales associations 1920 to 1929. It appears from this exhibit that in 1920 there were 3 such associations operating at 3 markets, Denver, Omaha and St. Joseph, and that their combined sales were 84,863 head of cattle, whereas in 1929 there were 28 such associations operating at 22 public markets with aggregate sales of 1,904,066 cattle.

Petitioners' Exhibit 34 relating to hogs handled by co-operative live stock terminal sales associations 1920 to 1929 shows that there were 3 such associations operating at 3 markets, Omaha, Denver and St. Joseph, in 1920 with sales of 536,380 hogs and that in 1929 there were 28 such associations operating at 22 public markets with sales of 8,054,186 hogs.

Petitioners' Exhibit 35 relating to sheep handled by co-operative live stock terminal sales associations shows that in 1920 there were 3 such associations operating at 3 public markets, Denver, Omaha and St. Joseph, with sales of 29,676 sheep and that in 1929 there were 28 such associations operating at 22 public markets with sales of 2,093,137 sheep.

Petitioners' Exhibit 36 shows that the dollar volume of sales of livestock by these cooperative live stock terminal sales associations increased from $37,419,935 in 1920 to $302,894,934 in 1929.

Petitioners' Exhibit 37 relating to live stock, sales and purchases by terminal market cooperative sales agencies
[fol. 859] at 22 markets during 1929 shows that in 1929 the cooperative selling of such agencies at the Chicago market aggregated $50,041,152, at East St. Louis $49,026,-612, at Indianapolis $22,302,234 and at St. Paul $52,464,012.

These co-operative agencies are selling agencies, and sell livestock for a commission like old line commission agencies, and occupy generally the same position as they in relation to buyers, in the assignment of pens by the stockyards companies or in any other favors which the stockyards have to bestow on persons using the yard facilities. However, most markets handle the apportionment of pens through a pen committee containing representatives of the livestock exchange as well as of the stockyards company.

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269 (8) HUTZEL METZGER, Assistant Chief of the Division of Cooperative Marketing, Federal Farm Board, testified:

Petitioners' Exhibit 38 is a tabulation of number of farmers' cooperative associations, their estimated membership, and volume of business, by commodity groups, for the years indicated, based on statistical data and other information gathered by this Division. Prior to 1920, the cooperative movement was largely in local associations handling a relatively small business. Then the drift toward terminal agencies set in, and there has been a rapid growth in volume of business handled since that time.

271 The big growth particularly in the live stock and dairy and poultry organizations has come since 1920.

272 For 1920, we would only have detailed information as to the actual number of cooperative associations, but we do have on certain types of associations, as, for example, the terminal market live stock agency, and so forth, the census figures in 1919, or the 1920 census. The volume of business handled, according to the census figures in 1919 was $806,599,000. Our figures show, in 1929, 1930, that two and a half billion dollars worth of business was handled by all of the cooperative associations of which we have a record.

[fol. 860] AGREEMENT RE USE OF MOODY'S MANUALS

279A-299 In lieu of stating the testimony of John Sherman Porter, Vice President of Moody's Investors' Service, and Editor-in-Chief of Moody's Manual, New York City; and Robert V. Fleming, President, Riggs

National Bank, Washington, D. C.; and William W. Spaid, member of W. B. Hibbs & Company, investment firm, Washington, D. C., it is conceded on behalf of the United States that Moody's Industrial Manuals for the years 1920 to 1930 were accepted as available for use and reference by any of the parties in the compilation of statistical material to be offered in evidence.

[fol. 861] (9) WILLIAM A. MOODY, President of the Moody Commission Company, National Stockyards, Illinois, testified:

299-335 This company is a livestock commission company on the National Stockyards, just outside East St. Louis, Illinois, and sells livestock shipped to us on consignment, for a commission. I have been in this business 31 years. East St. Louis is the fourth largest livestock market in the United States—Chicago, Kansas City, and Omaha being the three larger markets.

I am president of the St. Louis Livestock Exchange, and was president of the National Livestock Exchange about 20 years ago.

Buyers of livestock on the National Stockyards consist of (1) packer buyers, who are the employed buyers for packing houses located at that yard; (2) order buyers, who operate independently and buy to fill orders of packers located in other cities, usually in the East; and (3) traders or speculators, who buy on their own account, sort and shape the stock into better condition for sale, and aim to resell it at a profit—sometimes to packers, sometimes to farmers for fattening. One hundred eleven individual commission men operate on this yard in 41 separate concerns, and 75 individual order buyers in 25 separate concerns. Both Armour and Swift, and also the East Side Packing Company, buy and slaughter on this yard; several smaller packers located in St. Louis also buy there, but in comparatively small quantities. We have very active competition between buyers in the purchase of livestock both between these packers and between them and buyers for outside packers. To the extent of my observation, all of them are given the same opportunity on the market, both buyers and sellers, and there is no distinction whatever. The

Packers and Stockyards Administration of the United States Government has an office there, and the space and facilities afforded by the yard are ample. Commission rates [fol. 862] are fixed by the livestock exchange, subject to the supervision of the government, and we are registered under the Packers and Stockyards Act.

By consent of the stockyard company, pens on the yard are assigned to commission agencies by a pen committee appointed by the livestock exchange. I was a member of this committee for 10 or 15 years, and chairman for a while; but left it five or six years ago. This system of allocating pens is the same that has been in use for the past 15 years.

311 I sell live stock to buyers representing Armour and Swift and I sell to them in competition, one with the other. There is just as much competition between Armour and Swift as there is between order buyers and Swift, every day.

312 The volume of sales of my company in 1929 was some 3,000 or 3,500 cars.

321 The buyers who purchase stock for feeding and fattening against the future market are not termed order buyers. We term those firms traders, who hold the stock in the yards to go out to be fattened.

324 Most of the live stock purchased at the East St. Louis yards by order buyers is for slaughter. The bigger part of it is sent to some slaughtering house in the East. Of course, a man might have an order to ship cattle anywhere, to Ohio, or Pennsylvania or Maryland, and they might go on feed or anything. I would not say that purchases from another part of the country are frequently for the purpose of feeding, but that happens. The
325 big part of it goes to slaughterers. My judgment is that it would be at least 90% of it goes to slaugh-
326 terers from what we call order buyers. Traders and speculators usually take their stock to another part of the yard that we call the traders' division and it is subsequently sold for slaughter at that yard. Most of it is for resale, some of it in the yard.

332 It is not generally true, other things being equal, that the man who handles the most stock at the yard will be represented on the pen committee and other things being equal receive a preferment in the allotment of space.

[fol. 863] The smaller man is just as apt to have the best location as anybody else. That has been true ever
333 since I can remember. The East Side Packing Company is one of the big companies at East St. Louis. I think they buy about as much stuff as either Armour or Swift. They compare favorably with them. I do not know whether they buy quite as many or not but they are a big factor in the yard.

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336 (10) Dr. Frank W. Miller, Assistant Chief, Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture, testified:

This Division has been functioning since about September, 1921, shortly after the approval of the Packers and Stockyards Act. I have been with it since November, 1921.
It has 20 field offices located at the more important
338 livestock market centers in the United States, with local livestock market supervisors, a staff of 20 or more accountants and auditors engaged in auditing and examining the books and records of persons subject to the Act. In addition to these and other usual clerical forces, we have a chief engineer and a staff of auditors engaged in the appraisal of stockyard properties; also an administrative staff in Washington, consisting of the Chief of Division, and under him a section in charge of trade practices, one concerned with audits and accounts, one handling registration and filing of tariffs of rates and charges, and one handling personnel matters. The valuation section is
339 under the chief valuation engineer, with headquarters at Kansas City, Missouri. We also have an engineer and two skilled experts looking after the inspection and testing of scales at stockyards, on which livestock is weighed.

340 Under the Act we require registration of all engaged in the business of buying and selling livestock on public stockyards, whether as commission men, traders, packer buyers, or others rendering miscellaneous
343 stockyard services. Petitioners' Exhibit 40 is the form used for this purpose.

[fol. 864] We exercise jurisdiction over all public stockyards over 20,000 square feet area, exclusive of passageways, and 72 such yards are now posted. We also require

bonds of market agencies, and Petitioners' Exhibit
343 41 is the form of bond required.

344 Petitioners' Exhibit 42 was prepared in the Packers & Stock Yards Division from its records of registration. It shows that the total number of market agencies registered as of June 30, 1930, was 1,302 consisting of the following classes:

344-5 and P. Ex. 42 Commission men of which there were a total of 823 handling various species of live stock, so-called order buyers which are market agencies as defined in the Act, of which there were 264 registered, handling various species, so-called clearing agencies which come under the classification of market agencies of which there were 44, and then the miscellaneous group of market agencies rendering various miscellaneous services not included in the other groups, of which there were 171, making the total, which I first gave, of 1,302.

345-6 and P. Ex. 42 Petitioners' Exhibit 42 also shows that on June 30, 1930, there were 3,159 dealers registered with the Packers and Stock Yards Administration. Included under dealers are buyers; that is to say, those who buy live stock only either on their own account or as an agent or employee, and of this class of dealers buyers only there were 2,061 registered. This group includes buyers employed by packers to buy live stock. The second classification is known as traders. Those are persons who buy and sell usually on their own account, often known as speculators, of which there were 896 registered. The third group is classified as buyers and traders. That takes in classes where they buy either on their own account or as an employee. We throw those together, to take care of classes that could not be placed accurately in the other two groups. Of this class there were 138 registered. There is a small miscellaneous group of dealers which could not be conveniently put in the other classifications of which there were 64 registered, making a total of 3,159 dealers registered. The total of all registrants shown by Petitioners' Exhibit 42 is 4,461.

[fol. 865] Petitioners' Exhibit 43 shows the number of market agencies and dealers registered under the Packers and Stock Yards Act on August 6, 1930, at particular markets, there being on that date at Chicago, Ill., 215 market agencies and 412 dealers, at Kansas City, Mo., 102 market

agencies and 270 dealers, at National Stock Yards, Ill., 108 market agencies and 143 dealers, at Omaha, Nebr., 95 market agencies and 176 dealers, at Sioux City, Iowa, 62 market agencies and 75 dealers, at South St. Joseph, Mo., 52 market agencies and 77 dealers and at South St. Paul, Minn., 74 market agencies and 114 dealers, or a total at 7 markets of 708 market agencies and 1,267 dealers.

364 Exhibit 44 is a list of stockyards over which the Department has taken jurisdiction under the Act, with their location, owner of the property, and the dates under which they were posted as subject to the Act. Petitioners' Exhibit 44 shows that the number of public stock yards registered under the Act has increased from 54 in 1921 to 72 in 1930, and that the 72 public markets existing in 1930 were located in 31 states and in the District of Co-

350-5 lumbia. We required all stockyards and market agencies to file with us schedules of rates and charges for services rendered and practices enforced, with notice as to any changes. These changes are also required to be posted on the yard and made available to the public to whom the services are rendered, or to any person interested in knowing them. If they are found unreasonable, the Secretary may upon complaint, or upon his own initiative, and full hearing, prohibit them and determine proper rates to be charged, and this was recently done relative to livestock commission rates on the Omaha Stockyards.

We are endeavoring to exercise all the powers and perform all the duties with which we are charged under the Act, as occasion arises.

355 As to our supervision of packers under the Act, all their employed buyers operating on public yards are required to register with us as dealers. The requirement of bond to cover their purchases is claimed, but is not now [fol. 866] being pushed, pending the decision of a case involving the validity of that requirement, now pending in the federal court at Chicago.

356-7 The packer buyer, of course, is subject to the same supervision, observation and practically daily contact by the Bureau's supervisors on the various stock yards, as are all other classes of buyers and registrants engaged in the business at the market. If there are any complaints regarding their methods of buying, regarding competition, regarding unfair tactics, brought to the attention of the

supervisor by the sellers on the market or by any producer or shipper, the action of these buyers is promptly investigated and all the facts obtained that can be obtained and reports made to the Bureau. The supervisors, of course, make frequent reports to the Bureau regarding all of their activities and are almost continually carrying on investigations, either by direction of the Bureau or on their own initiative, as the routine work develops matters that require investigation.

As to their meat packing establishments and sale of their products, we require the packers under Title II of the Act to furnish us with annual reports, which are largely
364 financial in character and of which Petitioners' Ex-
357 hibit 45 is a specimen form. We have received a considerable number of complaints, usually of an informal character, from packer competitors, sometimes from farmers and producers, with respect to their activities in the sale of meat and meat food products, or the purchase of butter, food, and creamery products in the case of packers hand-ing those commodities. We have conducted a considerable number of investigations in this field and also in the field of packer activities in the purchase of livestock other than on posted stockyards, such as country con-
359 centration and assembly points. We do not have men regularly stationed at these concentration or assembly points, but we regard the buying operations of the packer there as being subject to our jurisdiction, if there [fol. 867] is interstate commerce involved, and as I have said, we have made some rather extended investigations of the conditions under which the live stock at certain of these concentration or assembly points are handled and bought, the conditions under which competitive buying is carried out in the territory using a number of these concentration points. We do not have access to, or go over, packer
359 books as occasion requires, the work of our audit and accounts division relating principally to the investigation of rates and charges by the stockyards companies and market agencies. The Packers and Stock Yards
360 Administration does have access to the books and records of stock yards companies and commission firms in connection with an investigation into reasonableness of rates and charges. For example, if a stock yard company is concerned, very complete, detailed financial and

historical audits are made of the records and books of that company. The same thing is true with respect to making audits of the books and records of the commission firms or market agencies when the Secretary is engaged upon an inquiry as to the reasonableness of the rates and charges for buying and selling live stock on commission, and he is now and has been engaged upon such inquires at a number of the principal stock yards. The Secretary in a num-
361 ber of instances has exercised his authority to suspend the registration of market agencies and dealers for violation of provisions of the Act.

362 The work of our trade practice division is handled largely through our stockyard supervisors and special investigators, and concerns largely the handling of informal complaints as to practices of commission men, traders, or packers. A great part of the work of our supervisors has to do with continuous supervision, observation and investigation of the practices carried on by the persons engaged in the business from day to day as a general part of their routine duties.

364-7 Petitioners' Exhibit 46, prepared from material obtained in packer reports, show the financial results of operations of 832 packing concerns in 1929, report-
[fol. 868] ing to us under the Act, grouped as federally and non-federally inspected slaughterers, and non-slaughterers, Non-federally inspected slaughterers are concerns not subject to federal meat inspection, because their products do not move in interstate or foreign commerce, yet subject to the Packers and Stockyards Act because they purchase livestock on a public stockyard market. There are in each of these three groups additional concerns whose reports were received too late for tabulation or were too in-
376 complete for use, — altogether 136 such concerns in
393 addition to the 832, with a total volume of business of approximately $175,000,000.

367 Petitioners' Exhibit 47, also prepared from material obtained in packer reports, shows a comparison of financial operations of packers reporting to us under the Packers Act, 1925 to 1929.

368 Petitioners' Exhibit 48 shows a list of public stockyards reporting to the Bureau under the Act, their location, and the total receipts of livestock upon them

by species for the year 1929, as compiled from their reports for that year.

369 Our supervision of stockyards under the Act includes requiring them to file schedules of their rates and charges for services rendered their patrons, which include allocation of pen space, the furnishing of food and water to livestock, the use of scales and weighing facilities, chutes, and other physical facilities for loading and unloading, and on some yards other miscellaneous services, such as immunization of swine, dipping of cattle, and sheep, etc.

If schedules of rates and charges, when filed, are re-
370-5 garded as in any way improper, sometimes informal adjustments are made after conference with the stockyards; but if necessary, formal proceedings are instituted under the Act to determine the reasonableness of the rates filed, and if unreasonable, to prescribe those deemed proper. The stockyard owner is further re-
375 quired not to engage in any unjustly discriminatory practices, so that we exercise supervision over that to see that the stock yard company does not unjustly discriminate as between the various agencies at the stock yards in the allocation of space in which the agencies can handle and place the live stock they receive for sale on commission basis.

[fol. 869] We at times have complaints as to discrimination in the allocation of pen space, but have so far
375 been able to adjust them by informal methods. If such discrimination were found, we should feel warranted in proceeding against it as an unfair or unjustly discriminatory practice forbidden by the Act. The rates or charges for any services that fall within the provisions of the Act must be filed with the Secretary and posted on the yard. There is no difference in the character of
378 the supervision exercised at so-called packer owned and non-packer owned yards. The supervision is identical at all posted stockyards.

The Secretary does not claim any jurisdiction to regulate rates or prices as to meat packers under the Act. We
379 claim and exercise jurisdiction over them only with reference to restraints of trade, unfair practices, etc., under Title II of the Act, except as their buyers are regulated in their capacity as dealers, under Title III.

We claim and exercise jurisdiction over private yards and concentration points operated by packing con-
380 cerns for the receipt and purchase of livestock other than on public markets only so far as what goes on in those yards comes under Title II of the Act, that is, so far as they are the operations of a packer as such,
381 we do not reach them on those yards in their capacity as a buyer of livestock under Title III. An instance of such a yard is the Mistletoe Yard located adjacent to the plant of the Fowler Packing Company, in Kansas City, Kansas, which is a subsidiary of Armour & Company. Livestock, pricipally hogs, are received and physically handled there, similar to the handling given them on public yards, but no commission firms or
383 dealers are admitted to operate on this yard. The livestock is received from so-called "selected shippers" operating independently through the country, who buy it from the grower and ship it in on the understanding that it will be purchased at prices comparing with those paid for similar grades and quality on the public market at Kansas City on the same day. Others than these selected [fol. 870] shippers cannot ship to the yard. The Fowler Packing Company is the only buyer on this yard. There are several similar yards located elsewhere—two in
387 St. Louis, Missouri, one of which is adjacent to the St. Louis Dressed Beef Company, a subsidiary of Swift & Company; and another, to the St. Louis Independent Packing Company; one in Chicago adjacent to the Omaha Packing Company, a subsidiary of Swift & Company; one operated by the Cudahy Packing Company at Newport, Minnesota, across the river from South St. Paul; one by Hormel & Company, Austin, Minnesota; one by Wilson & Company at Albert Lea, Minnesota; and one by Martin Gregson, a subsidiary of Wilson & Company, at Nebraska City, Nebraska. There may be others that I do not now recall.

405 At yards of this type the Secretary of Agriculture decided in Docket No. 1 that they were yards owned by an individual company for the receipt there of livestock for its own use, and not a public market as defined in the Packers and Stockyards Act.

Our system requires the packers to report the total number of head of livestock purchased for slaughter,
390 but no separate report is made as to livestock purchased on these private yards. The stockyards re-
391 porting to us must furnish us with a list of their 15 principal stockholders; and in special audits, sometimes we obtain a complete list. While the Secretary
392 has sometimes disapproved decreases, he has, on the other hand, sometimes authorized increases beyond those claimed, where it was thought necessary in order to give a fair return upon the property invested.

394-5 The Secretary has never attempted to exercise any jurisdiction over meat packers in handling lines of business other than those which qualify them as packers under the Act, as, for instance, in handling canned fruits, vegetables, and other wholesale groceries. Nor do we attempt to exercise any supervision over packer use of refrigerator cars.

394 There has never been any determination made by the Solicitor for the Department of Agriculture as to whether or not the Packers and Stockyards Act gives the Secretary of Agriculture regulatory jurisdiction of the business of the packers other than that which qualifies [fol. 871] them as packers under the Act.

We have had no cause involving the regulation of the business of dealing in canned fruits or vegetables
402 by packers, and I do not know personally whether we have jurisdiction or not.

The Secretary of Agriculture handed down a decision in Docket No. 1 holding that the Mistletoe Yard at
405 Kansas City is not a public market, and, therefore, not subject to being posted as such. Morrell & Co. has a private stock yard at Ottumwa, Iowa, Kingan & Co. at Indianapolis, Rath Packing Co. at Waterloo, Iowa and Jacob Decker & Sons Co. at Mason City, Iowa.

The Secretary of Agriculture held in Docket No. 1 that he had jurisdiction over the activities of the Fowler
406 Packing Company, a subsidiary of Armour & Co., at the Mistletoe Yard under Title II of the Act and the Secretary exercised such jurisdiction. Any discriminatory practices such as are forbidden by Title II of the Act, which might be indulged in by a packer operating his pri-

vate yard, such as Mistletoe, is supervised and looked after and taken cognizance of by the Secretary of Agriculture.

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410 (11) CLIFFORD V. GREGORY, Editor-in-Chief of the Prairie Farmer, Chicago, Illinois, testified:

The Prairie Farmer, a weekly periodical, has a circulation of over 300,000, chiefly in Indiana, Illinois, and
411 Wisconsin. My editorship during the past 19 years has brought me into wide contact with individual farmers at farm meetings and otherwise throughout the country, and has given me occasion to study farm
412 problems extensively. The Prairie Farmer conducts a market news service embracing radio broadcasting.

The Prairie Farmer owns a controlling interest in
413 Radio Station WLS, which is operated primarily as an agricultural service station. We broadcast market [fol. 872] reports at very frequent intervals throughout the market day from the time the market opens until it closes. Live stock market reports are broadcast four times each day and six days in the week, and on Sunday at two different periods we broadcast the estimated receipts for the following morning.

416 One of the problems troublesome to the farmer lies in the spread between producers' prices and retail prices on the food commodities they raise. In my lines, this spread exists most largely in the retail branch of the trade. Retail prices in meats do not, in my opinion, respond as readily as they should to fluctuations in wholesale prices, and this seems particularly true with reference to movements of wholesale prices downwards. My
418 opinion on this subject is based upon price studies conducted since 1920 for a few days at a time on
420-1 an average of probably once a year. This data has been gathered from 15 or 20 retail shippers in Chicago, including 3 or 4 chain stores. These have been compared with wholesale meat prices for
422 similar times and territories, taken from the Bureau of Labor Statistics publications, and with livestock prices on the Chicago market also for the same times, secured from the Department of Agriculture.

425 There has been a more or less steady increase in this price spread since 1913, but the principal increase took place during the war and the one or two
424 years following. I think there has been some increase since 1920, but I cannot say whether these increases have been principally between livestock and wholesale prices or between wholesale and retail prices.

A retail dealer accounts for this increased spread
426 by increases in his costs all along the line.

I am not enough acquainted with the technical
428 phases of the business to be able to say how these apply. My knowledge has been gained chiefly as a consumer.

I think this difficulty as to price spread would be relieved if facilities used in handling meat could be used in
418 other food lines as well, and if meat packers could handle retailing of the meat products they produce.
[fol. 873] This would reduce costs through enabling the handling of meats and other lines in combination
427-8 stores, increasing the volume of business per store, and thereby leaving a lesser portion of the total cost to be charged up against meat. It would also enable cutting to be done at central plants, and the product
432 distributed in frozen packages through the use of a special freezing process now developed. This would eliminate the necessity of expert cutting at the retail meat store. I understand this freezing process requires colder temperatures and would involve certain changes in refrigeration equipment. Packer retailing is not necessary to effect the economies of the combination store; but if the packer handled retailing, he would, in my opinion, be more interested in moving his product promptly into retail markets at prices that would enable their prompt disposition, than is the average present-day retailer. This would aid in relieving so-called gluts on the market, which are very harmful, from the price standpoint, to the producer.

450 There is, in my opinion, a superfluity of retail outlets, and there should be a lesser number by increasing the business volume of those remaining.

456 Petitioners' Exhibit 49, being pages 10 and 11 of "Crops and Markets," for January, 1930, was admitted, showing receipts and disposition of livestock at public stockyards, in detail for 1928 and 1929.

457-9 Petitioners' Exhibits 50, 51, and 52 were received by agreement, being the annual reports for First National Stores, Inc., for 1928, 1929, and 1930, respectively. These were admitted in evidence only as to matters of fact therein stated, and to the exclusion of matters of opinion or prophecy.

Petitioners' Exhibits 50, 51 and 52 show that First National Stores, Inc. have four manufacturing and distributing plants located at Somerville, Mass., East Hartford, Conn., Bridgeport, Conn., and Providence, R. I., that the company operates its own bread and cake bakeries; that in 1929 and 1930 a new plant was constructed at Somerville designed chiefly for the handling of meats, fruits and vegetables and the manufacture of delicatessen and other meat products; that the company sells the output of the Bellows Falls Cooperative Creamery, Inc., the largest cooperative milk plant in New England.

[fol. 874] (12) EDWIN W. JAMES, Chief of the Division of Highway Transportation, Bureau of Public Roads,
459 Department of Agriculture, testified:

This Bureau has supervision of the construction of public roads with Federal aid, under the Federal Aid Highway Act, and incidental thereto conducts studies and investigations, and collects statistics, as to the management, operation, and use of highways, materials, their sources and use in road construction, etc.

462 Petitioners' Exhibit 53 shows rural road mileage in the United States, based on statistics gathered by the Bureau, from 1904 to 1930. The first column headed "Grand Total" represents all legal road mileage of public roads in the United States, regardless of type, and including roads laid out but not yet started. The columns
468 headed "Surfaced" include all roads on which any surface material has been placed, other than native soil. The columns headed "High Type" represent
463 roads so surfaced that they may be described as dustless and mudless. The figures under "State

Highways" and "Local Roads" represent the portions of all rural roads that are under those respective jurisdictions, and in each case the figures for "High Type" roads are included in those for "Surfaced Roads"; and the latter, in turn, in the totals in the preceding columns.

The percentages in the last six columns show the
469 percentages of the total roads of the variety shown at the head of each column that are either "Surfaced" or "High Type" as respectively indicated. This exhibit shows that surfaced roads in the United States have increased from 387,457 miles in 1921, to 662,435 miles in 1929; and that these "High Type" (including concrete, asphalt, macadam, etc) have increased from 36,038 miles in 1921, to 112,454 miles in 1929.

Petitioners' Exhibit 54, in 10 sheets, shows statistics gathered by our Bureau under authority of law relating to motor vehicles in the United States for the years 1921 to 1929, obtained from the registration officials of the various states. This shows an increase in the number of trucks and commercial cars from 979,904 in 1921, to 3,379,854 in 1929.

[fol. 875] (13) LEVON E. TRUESDELL, Chief Statistician for Population, Bureau of Census, Department of Commerce, testified:

472 Petitioners' Exhibit 55 is a preliminary announcement of population of the United States based on the 1930 census, and shows distribution of population between various United States possessions, various sections of the continental United States, and the states therein located; and a comparison of the figures for 1930 with corresponding figures for 1920. It shows that the population of continental United States increased from 105,710,620 in 1920 to 122,698,100 in 1930, or 16.1%.

Petitioners' Exhibit 56, being pages 16 and 20 of
474 pamphlet "Number and Distribution of Inhabitants," based upon the census of 1920, shows for that and certain previous years populations by geographical divisions and states, and for territories east and west of the Mississippi River. This shows in 1920 70% of the population living east, and 30% west of the Mississippi River.

(14) OSCAR G. MAYER, President of Oscar G. Mayer & Company, Chicago, Illinois, testified:

475 I have been with this company for 21 years, and was president of the Institute of American Meat Packers for four terms, from 1924 to 1928. This is a national trade association of the meat packing industry, with about 260 members, embracing among them about 95% of the total volume of business of the whole industry in the United States, both federally and non-federally inspected, i.e., about 95% of the total output of the 1,250 meat packing concerns shown in the census report. We have always prided ourselves that the meat industry has the
520 largest gross value product of any industry in the United States. For several years the automobile industry outstripped us, but since that we have again resumed first position. My concern deals principally
476 in pork products, and has plants in Chicago and Madison, Wisconsin. For our Chicago plant we buy livestock on the Chicago market, through a buyer employed by C. A. Burnette Company, an abattoir which does
480 all our slaughtering for us there. We also buy carcass cattle and beef cuts, and process them into merchantable forms.

[fol. 876] Packers who do processing must buy their carcasses principally from slaughtering packers, either
514 federally or non-federally inspected, in competition
515 with whom they, in turn, sell their finished products. Custom slaughtering is negligible in the industry.

477 For our Madison plant, where we do our own slaughtering, we buy principally locally, direct from the country, receiving it at our private yards in Madison; and the balance on the various western markets.

478 Petitioners' Exhibit 57 shows comparison of our volume of business, net worth, and profits for the years 1922 to 1928, in which time our sales have doubled. Petitioners' Exhibit 57 shows that in 1922 the sales of Oscar Mayer & Co., were $10,012,038 and its profits $133,713; and that in 1928 its sales were $21,630,513 and its profits $290,737; that in 1922 the company's return on net worth was 5.15 per cent and on sales 1.33 per cent and that in 1928 the company's return on net worth was 9.69 per

cent and on sales 1.35 per cent. We distribute our
476 product locally in Madison and Chicago as much as possible; then in Milwaukee; the East, and in export trade—largely English.

482 The conditions on the Chicago live stock market as well as all live stock markets are highly competitive. The buying potential in the Chicago market consists of the local packers in Chicago and practically every packer east of Chicago that might be in that market.

In buying in the vicinity of Madison, where we have
483 our private yard, we have the same degree of competition because of the fact that any man in our territory can ship his stuff into the Chicago market or the Milwaukee market, which is also a public market, or to Cudahy Bros., who operate a packing house on Lake Michigan right near Milwaukee, similar to ours, but larger. In other words, the transportation facilities surrounding Madison are such that any man, any farmer, can ship his hogs to any one of these four points and make that market the following morning; by the four points I mean our own packing house and the other three I have mentioned.

482 Both in our purchases of livestock and raw meat products and in our sale of the products we mer-
[fol. 877] chandise, we encounter the keen and active competition of Swift, Armour, Cudahy, Wilson, and
482 other meat packers, both federally and non-federally inspected. Competition has grown constantly
513 keener in the packing industry from year to year.

When I say that competition is keener, I mean there is more interest shown in the development of new products and better products, that there is better publicity and a keener desire on the part of the packers to follow their manufactured products into public consump-
485 tion.

There has been a very great increase in the use of motor trucks for delivery in my business in the last five, six, or seven years. A great portion of the business that used to go by local freight is now being shipped by motor truck. Distribution by peddler cars was probably
528 the most prevalent source of distribution until the motor truck gradually cut in on that. Of course there is still peddler car distribution within a radius of 75 miles, but I think it is diminishing.

Non-federally inspected products can be sold
487-8 only locally, and not in interstate commerce; but
their competition is generally more severe than federally inspected products because their freedom from the requirements necessary to meet the standards of federal inspection often permits them to operate at lower
costs. According to my observation, there is no dif-
489 ference whatever as to the character of the services
rendered or in the competitive conditions existing and the supervision of packer owned yards and non-packer owned yards.

Up to a radius of 75 to 100 miles from our
484,503 plants we distribute our products mostly by auto
trucks, where prior to development of truck transportation, refrigerator route cars or package freight would have been necessary. Within this area, truck transportation is cheaper on less-than-carload shipments, because we save the cost of initial hauling to the freight station and drayage at destination. Truck hauling itself costs about the same as LCL railroad rates, and enables the use of a collapsible returnable package, which is also a saving; and enables us to give a higher type of personal service to our customers. Where we can ship in carload quantities, as to Milwaukee, and to points beyond the 100-mile radius, [fol. 878] rail shipments are cheaper. For these, we use
leased refrigerator cars as much as possible, and
485 railroad equipment for the remainder. The former
we lease for a term of years at $45 per month, and
collect from the railroad company mileage on the
506 distance traveled at two cents a mile. We have no
difficulty in getting all the cars we need. In order
518 fully to compete with the large packers at the various small towns which they serve, it would be necessary for us to use peddler cars. There are certain economies in connection with peddler cars that you cannot get from plain L.C.L. shipment, but there is nothing to prevent
me from doing it.

489 In my judgment, there is no monopoly, either in
livestock or in the dressed or cured meat products from them, in the United States—nor can there be, because of the enormous amount of meat that is grown and its perishable character. Of the great number of farms in the United States, I know of no extensive control by meat pack-

ers, except that I understand Libby, McNeill &
518 Libby, a subsidiary of Swift, has plantations. Nor
490 do I know of any packer or small group of packers who control the supply of livestock, nor of any method whereby such control could be obtained. There are 20 to 50 packers operating in every market for meat products, and if any one of them should enchance the price unduly, it would soon be corrected by a large influx of meat from other packers. Similarly, the various livestock markets in the United States compete with each other, and if prices at any one of them fall below the general level, orders immediately flow in from the 50 or 100 packers, who receive constant information as to prices prevailing; and it
491 would soon be back in line.

492 There is a large number of local packers in every State in the United States. By local packers, I mean, of course, small slaughterers, but I also mean small processors of meat like small sausage makers, smokers and boilers of hams, etc., whose finished products compete with the finished products of all packers. There is a large amount of farm slaughtering, and we have to compete with that too. We operate but one retail meat market, principally for our employees, and have never felt inclined to go into the retail meat business commercially, because
495 to do so would be to compete with our own customers, and would alienate their patronage.

497 Less than 1% of our product goes to chain stores. [fol. 879] Their buying is sharp and keen, but we have never had any difficulty in dealing with them,
496 and their buying power is of no great importance in
498 our business. We give them lower prices than to
521 independent stores, as do packers generally, principally because of the quantity differential.

517 Independent retailers are, in my opinion, just as competent to dispose of meat products as the chain stores, as the incompetent independent tends to be eliminated.

510 Federal inspection of a packing plant requires certain structural standards, certain sanitation standards. It requires the branding of all products, the wrapping, the proper printing of all labels, etc., all of which

tends to add to the cost of the Federally inspected
511 products on the market. There is no inspection fee.
I would say that there is not nearly as much distinction between Federally inspected and non-Federally inspected products as there should be in the minds of the American Public. That is simply due to the fact that the American public has never been adequately impressed with that distinction. The non-inspected plants sell their products locally, but the local markets, of course, are very large in many localities in the United States.
521 Our business depends in substantial degree upon the number of independent retail meat merchants available for the sale of our products, and any substantial decrease in this number would seriously hamper our business. If, for instance, 30,000 out of 70,000 existing independent retail meat markets were to be taken over by the meat packers for the retail sale of their own products, it would be seriously disadvantageous to us, even though these packers should no longer compete with us in
523-4 our sales to the remainder, because it would diminish my clientele and narrow my market by that much.
527 There is no such thing as quantity discounts in the
528 purchase of livestock. The packer in a public market may buy considerable quantity, nevertheless, that quantity is bought from a large number of different individuals, no one of which would have enough to give a discount.
533 As to buying power, I think the buyer is practi-
[fol. 880] cally always in a stronger position than the seller, because of the large reserve supply of meat in the United States. The industry carries at the peak of its accummulation period, say late in April, as much as 750,000,000 pounds of meats in storage in coolers. The packers are always put to it to dispose of this supply.
531 A large number of packers, the large packers as well as a considerable number of the small packers, are capable of handling almost any sized chain store order that a chain store would offer to them. For example, if a chain store wanted to buy ten car loads of hams, I could sell them ten car loads of hams as well as Swift & Company. That is a large order—that would be an excessive order in fact, and I imagine is seldom placed.

534 A person who has a buying power of 5 per cent of the available supply of meat is in a very advantageous position. A man who has an available buying power has a definite advantage in the meat trade on account of the huge reserves and the willingness of the packing industry to sell its products at all times.

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536 (15) H. C. MERRITT, JR., The Tagus Ranch, California, testified:

I am vice-president and general manager of the Pacific States Corporation, which owns Tagus Ranch, a 7,500 acre fruit ranch 40 miles south of Fresno, devoted principally to the growing of peaches, prunes, nectarines, and
537 cotton. Our fruit crop is in excess of 30,000 tons annually. We do no canning ourselves, but sell to Libby, McNeill & Libby, California Packing Corporation, King County Packing Corporation, and California Co-operative Canners. In recent years, we have been afflicted with a tremendous overproduction, which necessitated throwing on the ground and allowing to rot the equivalent of 7,000,000 cases, out of a total crop of 20,000,000
540 cases fit for canning, grown in California, only 13,-
539 000,000 cases going into the industry. This discarding is handled by a committee organized by the industry, and the tonnage thrown on the ground is paid for [fol. 881] to the grower 45 days later. This overproduction is due to rapid planting some years ago, when there was a good consumption demand, planters ignoring the fact that the peak of orchard production is not reached for about seven years. We are in the midst of that peak now. No planting has been done in the past three years, and after 1932 production will start to fall off again; but in the meantime it is necessary to get additional
541 distribution, both domestic and foreign. If the packers could handle this distribution that would give us the equivalent of possibly several thousand additional wholesale grocers, with established branch houses, cars, warehousing facilities, and an organized sales force, which would lower distribution cost, so that half of the
542 savings could go to the farmers, and the other half to the public.

Due to these well financed distributing systems throughout the United States that now control their own
543 brands, such as Sprague-Warner and S. & W., I do not think it is possible to monopolize the fruit industry.

545 Packer distribution would throw an additional force of probably 2,500 salesmen into the field—not
544 that present distributing agencies do not reach sub-
546 stantially all of the United States, but that packer
545 distribution would reach new territories that are now covered by the wholesale grocers; and would create more competition in selling our products. If they offer them at a higher price, of course, they would
547 not get the trade; and if at a lower price, it would not brings us any more money. But the packer sales force would reach more retail customers and dealers,
547-8 and oftener; and by constant pushing and advertising would create an additional demand by persuading people to eat more fruit.

549 I understand from our traffic department that packers could handle these goods cheaper, because with their regular car routes they could ship them at freight rates to small grocers who now often have to have things sent in at high express rates.

554 Peaches differ from cotton, grain, or wheat, in [fol. 882] that crops in the latter class can be regulated from year to year, but once a peach orchard is planted it keeps on producing.

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556 (16) FRANK A. HUNTER, President of the East Side Packing Company, East St. Louis, Illinois, testified:

I have been President of this concern for eight and one-half years; and for 23 years prior thereto was with Swift & Company in various capacities from minor clerk to General Manager of the East St. Louis plant.

The business of the East Side Packing Company has grown from $3,500,000 in 1920 to $22,000,000 in 1929. In annual kill it has grown from 10,000 to 90,000 cattle and from 100,000 to 450,000 hogs.

561 Last year we earned 10½% on invested capital, and our profits since 1920 have increased by about
605 $175,000. We operate no branch houses, but about 22 peddler car routes, the longest of which is 600 miles, making two stops.

561 We operate our peddler cars in Missouri, Arkansas, Illinois, Kentucky, Tennessee, Mississippi, North and South Carolina and one or two into Pennsylvania. We have a salaried selling arrangement in New York City and sell on commission or brokerage in Philadelphia, Boston, Seattle, Richmond, San Francisco and Los Angeles. The greatest number of stops on a single route is possibly ten or twelve. We use 200 leased refrigerator cars, and
562 get additional ones as needed from the railroads, and sometimes from Armour and Swift. We have no trouble in getting all we need.

602 We ship butter and cheese in these peddler cars, in addition to meat products. They are loaded at our plant, as distinguished from LCL shipments, which are loaded by the carrier at its station. Peddler cars are
603 subject to a minimum load, for which we must pay a certain specified rate whether loaded to that minimum or not. They run on schedule. The railroad
604 agent tends to their unloading, but they are never unloaded through the warehouses as dry freight usually is. Customers know when they will arrive
603 and sometimes call for their deliveries; sometimes deliveries are made to them by local trucks that we hire.

[fol. 883] In the last seven or eight years motor truck deliveries have come into vogue, and we use them up to a radius of 100 to 125 miles from our plant, in which
563-4 territory Armour and Swift sell in competition with us, and deliver in the same way. This territory was formerly served by peddler cars that delivered perhaps twice a week, while motor truck use enables practically daily deliveries.

569 We buy at both packer-owned and non-packer
564 owned stockyards, and notice no difference in competitive conditions. We use our own employed buyers, independent order buyers, and also buy direct from the country.

567 Conditions on the live stock market at East St. Louis are very competitive. We have every class of

buyer known there and lots of them. Order buying is extremely active at St. Louis. I think they buy 60 of 70 per cent of the total receipts. Stocker and feeder buying is quite a factor in the cattle market and when we are buying cattle we buy in competition with men who are buying for feeding purposes. Competition at these various markets is keen, very keen, very active most all the time. Referring to competition in the selling of meats, if it is possible to be any more keen or any more active, I would say it is perhaps a little more that way in the selling than in the buying. It is very, very competitive at all places. It is a highly competitive industry. Both in purchase of livestock and in the sale of our products we meet strictly high class competition from Armour, Wilson, Cudahy, and other packers, and I have observed nothing in the way of manipulation or control of prices in either the buying or selling end of their business. I do not find among my competitors any such practice as requiring customers to buy certain lines of articles in order to get lines that the customers want to buy from the packing houses. I know of no one who has anything so outstanding to sell that he can make someone buy some other commodity from him in order to get that. I do not know of a single article in the trade that has that standing.

In selling we also meet the competition of local farm [fol. 884] slaughter but their products cannot get very far from home, and their competition is comparatively local. I use "local slaughter" here in the sense of that in which local livestock supplies are used, and its products sold principally near the place of slaughter, as with non-federally inspected plants. These cannot ship their products outside the State where manufactured, without complying with the requirements for a federal permit, and to do so requires quite a considerable investment—quite a bit of expenditure for sanitary conditions, and facilities for federal inspectors. Close to half of the meat products from the hog go into cured forms.

I think the trend of trade advantage is rather against the large packer, as compared with the small one, because of the development of chain store buying in carload lots. The chain store, we will say, groups four or

five hundred stores in a district together under one purchasing head and they become a potential carload buyer. Generally speaking, the small packers do not have what is commonly known as a branch house, so we are enabled to sell those four or five hundred stores in a carload way and naturally if we do then the branch, the packer branch to that extent is deprived of selling those four or five hun-
576 dred stores. We think that the branch house system of doing business is not so good any more under the present trend. Of course there still are a great many retail stores to be serviced but it is much simpler for us to sell a carload of meat to one buyer than it is to hustle out and in a remote town sell to the three or four hundred individual stores. It is almost impossible for us to do that. The trend is in the line of concentrated and centralized buying.

609-593 For the last five years, we have sold about 10%
594 of our total business to chain store trade, out of
595 which 4% or 5% goes to our largest single chain store customer. Our eastern chain store business I consider desirable, but that in metropolitan St. Louis which goes to three different chains and equals 12% of our [fol. 885] total business in that district or half of our total chain store business, is not so desirable, because we do not get the prices from them.

The small packer also has an advantage in being a little closer to his business and being able to make quicker decisions.

579-80 It is generally considered that the large packers clean up the market each day on the stockyards, because the small packer's buying is more selective and the large packer has facilities for most anything that comes along. But this cleaning up the market is not as
592 much as it apparently sounds—just a few hogs dropped out of the loads here and there, which the large packers usually take to accommodate the sellers. It constitutes only a very small proportion of their purchases.

We operate no retail meat or grocery stores, and have never desired to, because we would not do it without interfering with our established retail trade. It would unquestionably tend to antagonize them. As to buying power, any

large buyer's business is very desirable. The larger
601 the order, the better we like it.

As between a $1,000,000 and a $10,000,000 customer, the latter would have the greater buying power; but his buying power would be more dangerous to me than to a larger competitor selling, for instance, $5,000,000 or $6,000,-
000 business a year, for it would be only a small
602 percent of his total sales, whereas it would be 50% of mine, and I would not want to jeopardize my business by having my outlet confined to one source that took half of it.

605 The meat packing industry is becoming more competitive each year. That is brought about because the smaller packers are developing, they are getting more into the more remote fields. They are branding their goods, generally progressing in the manufacture of branded prod-
ucts in identifiable packages. They are operating
610 more efficiently each year. The commission man sells his live stock for the high dollar. He does not care
614 where it goes. The classification between animals purchased to kill and stockers and feeders is made after sale and not before sale.

[fol. 886] (17) GEORGE A. WYVILLE, Director of Market Service, Associated Press, New York, testified:

Petitioners' Exhibits 58, 59, and 60 illustrate the nature and extent of market news service afforded by the Asso-
ciated Press to its 1,286 member daily newspapers
617-623 over its 225,000 miles of leased telegraph wires and other communication facilities. It covers 37 livestock markets daily.

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624 (18) ABRAHAM R. GOLDBERG, President, Alabama Packing Company, Birmingham, Alabama, testified:

I have been with this company since its founding eight and one-half years ago. In that time, our business has
grown to a present kill of 65,000 hogs and 14,000
625 cattle. Our capital investment, originally $23,000, is now $400,000.

627 We are not federally inspected, and sell only in
629 Albama, distributing 85% of our product by motor
631 truck, 10% by express, and 5% by local freight—all
626 within a radius of 100 miles of Birmingham. We buy livestock principally direct from the country through
628 independent country buyers, some few on public markets. We buy our livestock and sell our products in the face of keen competition with Armour, Swift, Cudahy, Wilson, and other packing concerns, and to a certain extent have an advantage over them, because we kill locally and sell our stuff fresh. This brings from a half-cent to a cent a pound more than meat of the larger packers shipped
631 in from outside. They sell the same way we do, and I have observed no unfair practices in their com-
631-2 petition. By that, I mean they do not rebate. They do not do one thing and tell me they are going to do another. For instance, Swift has its Premium hams well advertised, but I can make a ham as good as they can and do make it. If I want chain store business. I must sell them sometimes as much as two cents to three cents a
634 pound less than to the independent.

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637 (19) ANDREW P. MILLER, Vice-President and General Manager, American Packing and Provision [fol. 887] Company, Ogden, Utah, testified:

Prior to my connection with this company four years ago, I was with the Western Meat Company, San Francisco, for 18 years, and the Oakland Meat Company, Oakland, California, for five years. The American Company was re-
639 organized in 1924 from the Ogden Packing Company, which existed for six years prior to that time. In 1929 our kill was 13,000 cattle, 12,000 sheep, 57,000 hogs, and 500 calves; our total sales, $3,850,000. In 1925 they were $2,800,000. We have three branch houses at Butte, Salt Lake City, and Pocatello, and operate five leased refrigerator cars, which satify our needs, although
641 we could get more if we needed them, by placing our order in plenty of time. In addition to this, we distribute by motor truck, local freight, and express, over a radius of 200 miles, in interstate commerce, and are federally

inspected. There has been a marked increase in good road development in our country in the last four years.

Five years ago we were not delivering by motor truck at anything like the extent we are doing now. We were operating only one motor truck. The road conditions
642 have made this extension of our motor truck distribution over a radius of 200 miles possible and this has occurred within the last 5 years.

We buy our cattle, lambs, and sheep principally on the Ogden public stockyard, which is our totally owned subsidiary, where we come in competition with Cudahy,
640 Wilson, Hauser of Los Angeles, Western of San
642 Francisco, Swanson of Sacramento, and seven local slaughterers at Salt Lake City and Ogden. Buying competition is keen, and I do not feel that we are at any particular disadvantage.

There is no advantage in our ownership of the stockyards at Ogden other than the profits derived from operating the stockyards in a financial way. It is no advantage
647-a to us to own those yards other than the actual money we get from the yards for services rendered.

We come into competition in our sales and of the busiNiss with Swift, Armour, Cudahy and Wilson and
644 find their competition keen and clean. We have no [fol. 888] special market carved out or allocated to us. I do not think we have got any advantage over the large packer outside of the fact that we are a locally owned concern and we use that fact in our advertising.

The non-federally inspected plants have a decided advantage over the federally inspected plants. The
646 advantage is that their investment is not as great as ours, according to their volume; also in the matter of sanitation and the rules and restrictions under which we operate under federal inspection. This makes doing business more expensive for the inspected house.

Fresh pork is more perishable than fresh beef. Fresh meats may be held ordinarily ten days after killing, without injury, and fancy cattle a little longer. Frozen meats
645 can be carried indefinitely but it is not advisable to
648 them over 90 days, with a limit of 120 days. If the
650 fresh meat market becomes glutted, we can adjust to it by freezing or curing a larger percentage of our
651 product, and by cutting down killing. Frozen meat

652 prices are from one cent to two cents per pound less than the same goods fresh. Cured meat prices are such that if we have to cure, instead of sell fresh, we about break even in the long run. We aim to get a fixed 663-4 margin of profit over our costs, and 90% of the time we are able to do so. We will not sell unless we do make a profit. If we cannot, we simply reduce our killing.

We have never attempted to do any retailing, and do not care to, as our present trade would resent it and would probably go elsewhere. We sell about 2% of our 655-8 commodities to chain stores—no more because they are not inclined to pay the prices we ask. We sell generally in Utah, Southern Utah, Eastern Nevada, and Western Wyoming, and Butte, Montana. At one 656 time, we attempted to sell in Los Angeles and San 657-8 Francisco, but found it unprofitable, as we could not sustain the cost of shipping hogs alive from Nebraska, killing and processing them at Ogden, and shipping the meat to the Coast, even at the carload rate, and [fol. 889] selling it in competition with Swift and Armour there, who brought their meats straight from Missouri River points. This does not apply to lambs, but we 659 could not sell lambs there either, as it would not be 662 profitable to maintain a sales organization there just for the lamb run season. None of the packing concerns selling in competition with us handles grocery products, to my knowledge.

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665 (20) HENRY FISCHER, President, Henry Fischer Packing Company, Louisville, Kentucky, testified:

666 This concern kills annually between 30,000 and 40,000 hogs, 9,000 cattle, and 5,000 lambs, and has had 667 a 100% increase in business since 1923, from a sales volume of around $1,000,000 that year to $2,250,000 last year. We sell only in Kentucky, and are not federally inspected. We distribute all our products by motor 670 truck, except 2% or 3% by express, over a radius of 100 miles, but mostly in the City of Louisville; and use no refrigerator cars. We sell to independents and chains, principally sausage and specialty goods, but 669 also fresh pork and beef. We buy 60 to 70% of our livestock at our plant directly from the farmers, who

truck it in—the rest on public stockyards at Louisville, Kansas City, and Chicago.

Both in buying and selling we meet a highly com-
671 petitive market, including Swift, Armour, Morrell, Rath, Indianapolis Abattoir, Kingan, and others; also with farm slaughter. I think we have a little advantage over other packers due to our stuff being locally killed and sold fresh, and sometimes get from one cent to one and one-half cents more for it.

673 We take note of the state of the Louisville market and the prices being charged there and in doing so we pay the most attention to the price being charged by the smaller packers because we have quite a few local [fol. 890] packers in Louisville.

We have never cared to retail, because we believe
672 the retailer would then refrain from buying from us.

Sometimes we have difficulty getting retailers to
675 reduce their prices promptly when we cut ours, in order to move a flood of a certain commodity. Others are very prompt. It is just a difference in salesman-
676 ship or merchandising skill. Chain stores are generally more alert and responsive to price changes than independent retailers.

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(21) David G. Madden, President, East Tennessee Packing Company, Knoxville, Tennessee, testified:

678 This is a slaughtering-packing concern, killing last year 50,000 hogs, 9,000 cattle, and 8,000 to 10,000 sheep, lambs, and calves. Its business has doubled since 1920. We sell within a radius of 300 miles of Knoxville; and up to 100 miles deliver by motor trucks, which we have developed in the past year and find very satisfactory—superior to the railroad shipments in that radius.
679 Beyond this we operate car routes with leased refrigerator cars, which we have no difficulty in getting.
680 We are federally inspected, but sell in keen competition with both federally and non-federally inspected plants. The small independent plant, in my opinion, has a certain advantage over the large producer, who sells at a distance from the point of slaughter, because he is more

flexible in adjusting himself to conditions, and because of the local preference for home-dressed meats. We have experienced no unfair practices from competitors.

681 We are at a disadvantage over what is termed the country killers who depend largely upon weather conditions and do their slaughtering in the country but bring it in on the market and dispose of it at whatever price they can. They go on the market or get off according to whether it is profitable or unprofitable, whereas in operating a concern like ours you have got to be on the market whether it is good or bad. That, of course, is increasingly true of what are called the large packers.

[fol. 891] In addition to meats, we handle cheese, butter, eggs, canned fruits and vegetables, and dried fruits;

682 and our salesmen solicit orders for all these lines at one time. We buy on the various public markets,

683 in addition to our local yard and country points;

686 and they are also in keen and active competition. About 40% of our hogs are bought direct, in which Armour and a few independents compete with us, but Swift does not.

687 We started originally as a retail store, and at one time marketed all our product from it. We still have it, and one additional at Knoxville; but retail now less than 1% of our products. The store manager buys wherever he can most cheaply, whether from us or other packers. We have not desired to increase our retail business, because it seems to create prejudice in our retail customers, and drive them elsewhere.

689 We sell 2% or 3% of our total to chains, of which there are but few in our territory. It is just recently that they have started down in that section. Their business is as satisfactory as any other, and we make the same prices to all. Our selling market extends 300 miles to the south, and 100 to 150 miles to the east and west—an average of perhaps 200 miles from Knox-

690 ville. It is not advantageous to go beyond this, because with transportation costs it is not profitable to draw hogs from the west, and ship the meat products back to the same territories.

We can serve our immediate territory to advantage over competition, but if we should go to Nashville, for instance, we would meet the competition of a local plant there, in

addition to that of Swift and Armour. The local plant buys hogs from the Nashville market, where we
692 would have to pay seventy-five cents to $1.00 freight, which is more than our profit. I cannot say why that keeps our competition out, but not that of Swift and Armour. Our peddler car service is satisfactory. We do not use railroad package car service to any considerable extent. If our shipments are not of sufficient bulk to fur-
[fol. 892] nish the peddler car minimum, we would either pay the penalty or ship by express. You have to
693 have at least 10,000 pounds in a car, or pay for it anyhow.

694 Express is considerably more expensive than LCL or peddler car service. Railroad package car service is not suitable, because half of our products are perishable and require refrigeration, and railroads do not have proper refrigerator package car service. In fact, there is none out of Knoxville, although there is some into it from Chicago. We have something over 200,000 customers, as represented by accounts in our books. If, for the development of packer retailing, a large part of this were to be taken over by Swift and Armour, it would be very seriously to our disadvantage, as it would narrow our market, and compel us to sek other outlets. The mileage we receive from the railroads on our refrigerator cars does not equal the rental we pay for them. Handling canned goods, fruit and vegetable lines in them, along with meats, is of no special advantage, except that it frequently saves us the penalty which we would otherwise have to pay because of lacking the minimum weight.

697-9 The shipment of canned goods, fruits and vegetables in peddler cars does not entitle us to a lower rate on these commodities than we would have to pay if we shipped them less than carload. There is no difference in rate at all.

STIPULATION RE TESTIMONY

In lieu of separately stating such testimony, it is conceded the following witnesses, numbered 22 to 27, inclusive, as hereinafter named and described, who are engaged in

the slaughtering and meat packing business, testified generally to the following substance and effect:

[fol. 893] 1. That they buy livestock both upon public stockyards and direct from the producer or shipper; that in the case of direct buying sometimes the stock is trucked into their plants; sometimes purchased at country concentration points, and shipped in.

2. That in selling their products they can make deliveries by motor truck transportation to advantage up to a radius of 100 to 125 miles from the plant; that in that radius such deliveries are superior to rail deliveries, because they enable store-door deliveries and eliminate cartage charges at points of shipment and destination; and enable more frequent deliveries and the maintenance of more personal contact with their customers; that, for such deliveries, their own trucks are sometimes used for shorter distances, and commercial truck lines for longer distances; that within this radius, this truck method of delivery, which has developed largely in the past ten years, has largely superseded peddler refrigerator car deliveries previously used; that Swift and Armour and other large packers use this mode of delivery, in competition with them.

3. That both in the purchase of their live stock and the sale of their products they meet active and keen competition from Swift and Armour, Cudahy, Wilson, and other packers, who respectively buy and sell at the same points. That there are no agreements between themselves and their competitors, and they know of none between their competitors, with reference to price manipulation or fixation, allocation of territory, or other unfair practices; that there is no monopoly in the meat packing business or the sale of its products.

4. That in selling they also meet the competition of farm slaughter and local slaughter, the products of which are sold in the vicinity of the place of slaughter.

[fol. 894] 5. That they buy live stock both on the so-called packer-owned and non-packer owned yards, and notice no difference in the service rendered at the two.

6. That the large packers, such as Swift and Armour, usually "clean up the market", on public stockyards, by

buying up the odds and ends left over after the day's sales. This they are able to do where the small packer is not, as the latter's buying is more selective, while the large packer is equipped to take care of all classes of stock.

In addition to their testimony as above summarized, said witnesses also testified severally as follows:

(22) GEORGE L. HEIL, President, Heil Packing Company, St. Louis, Mo., testified:

Direct examination:

Our business is pork packing and I have been con-
700 nected with the company 27 years. Our annual kill in 1929 was about 155,000 hogs, and about 1,000
701 cattle killed for sausage, and the volume of our business in 1929 was close to five million dollars,
702 which has been about the same for the past 5 years. We sell in the States of Missouri, Illinois, Arkansas and Kentucky. We buy the largest percentage of our hogs in Kansas City, Springfield, Mo., and some few in Omaha and East St. Louis, Ill. We have a salaried buyer in East St. Louis and use the order buyers in the different
703 markets. The competition in the buying in the Kansas City and East St. Louis markets is keen.

Our plant is federally inspected. Sixty per cent
704 of our business is done in the vicinity of St. Louis. We deliver by motor truck within a radius of 100 to 125 miles and also by express and freight. We used motor trucks as far back as 10 years ago for our St. Louis de-[fol. 895] liveries and in the last 4 years we have extended that out into a radius of 100 miles. I think the truck deliveries to customers beyond the city limits is an improvement over the railway. You can give them store-door delivery. In shipping out of St. Louis by rail
705 we use refrigerator cars which we obtain from the American Refrigerator Transit Co. We have no difficulty in getting the refrigerator cars that we need for our shipments. In the selling end of our business we compete with Swift, Armour, Wilson and Cudahy, and find them fair and have not observed any unfair trade practices in the selling end of the game. We compete with these

packers at the various live stock markets where we are buying.

707 We do not find that we are at any disadvantage in competing with the large packers for our requirements and this is also true with respect to the sales end. We come in competition with non-federally inspected plants and I would say that they have a big advantage over us.

Cross-examination:

710 We only buy about 1% of our live stock directly from the country. We sell about 5% of our city sales to chain stores and none of the other sales. That is divided among approximately 500 711 stores owned by about 3 chains. We have an ample market to dispose of our product without being compelled to sell a larger portion to the chains and have not found it necessary to try to expand our chain business. We like to support the small merchant in preference to the chain. We feel we would prefer to have a whole lot of small merchants trading with us than one or two great big fellows.

[fol. 896] Our motor truck radius is within the radius of 100 miles but with the refrigerator cars we ship all 712 over the central states. We ship to Chicago, to New 713 York, and to Canada. We do not make a regular attempt to get that business at those distant points. The brokers come in and ask us what we have got to offer.

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(23) Sederin L. Frey, Secretary-Treasurer, L. E. Frey and Sons, Inc., New Orleans, Louisiana, testified:

Direct examination:

889 We are sausage manufacturers and wholesale dealers in provisions such as cured pork and smoked 890 meats. Our company was incorporated January 2, 1921. The kill of our company in 1929 was about 5,000 beef and about 3,500 hogs. Our kill has increased three times over our kill in 1922 or 1923. We sell our products in the City of New Orleans and within a radius of 100 miles in the surrounding country. We do not either

buy or sell outside of the state. Our plant is not federally inspected. We buy our live stock at the New Orleans
891 Livestock Yards Co., a public yard. At times of the year Swift and Armour buy sausage material on this yard. We have 6 local concerns and there is one
892-3 order buyer there who ships out of the state. We buy in competition with these packers. It is active competition. In selling we come in competition with Armour, Morris, Swift, Cudahy, Wilson, Hormel, Morrell, Kingan, and White Provision within the City of New Orleans and in the surrounding country we compete with Miller
894 and Hart of Chicago, St. Louis Independent and Roberts and Oake. We find the competition of Swift, Armour, Cudahy and Wilson to be fair.

In New Orleans there are 2 slaughtering plants that are owned by the retail butchers. They slaughter about 75% of the meat consumed in New Orleans at these 2 plants. [fol. 897] The retail consumer market in New Orleans is about ¾ controlled by retail slaughterers.

Cross-examination:

895 We do not buy any live stock direct. We have never attempted to retail our own products but have thought of it. The retailers in New Orleans have been so unfair, you might say, in their methods to us that we are almost compelled to go into it.

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(24) HARRY A. SCHANZ, President and Treasurer, Cleveland Provisions Co., Cleveland, Ohio, testified:

Direct examination:

900 I have been connected with the Cleveland Provision Co. 19 years. It engages in the complete slaughter of all kinds of live stock and processing the products. During the year 1929 we killed in our own plant 350,000 hogs and 25,000 cattle and brought in 50,000 dressed hogs. We killed about 15,000 sheep and 15,000 calves. Our 1929 kill is about the same as the kill
901 of 1920, and total sales in 1929 were $13,500,000 and in 1920 were $12,000,000. Our operations have decreased in the last two or three years. That is due to our

inability to meet competition, particularly in fresh pork and dressed meat of the Western packers or packers killing at the source of supply. The chain store expansion is having an effect on our business. We are losing the business of the fresh pork and dressed meat. We can
902 not meet the price without severe loss. I would say that the chain store buying is closer and keener than [fol. 898] the buying of the single unit merchant. We operate chiefly within a radius of 100 miles of Cleveland and make deliveries by motor trucks. We operate 45
903 trucks. We sell about 50% of our products within the corporate limits of Cleveland and about 85% within a radius of 100 miles. We ship 10 to 15 per cent of our products by refrigerator cars. We have a few under lease and have no difficulty in getting cars. We op-
904 erate two car routes. Our plant is federally inspected. We buy our live stock from Missouri River markets up to Cleveland. De do semidirect buying from a man in Indiana who buys on his own account and sells to us. We take all his purchases. There is considerable competition in the buying end and we compete
905 with practically all classes of packing companies. The competition is lively and keen. We have three buyers at Cleveland, a cattle buyer at Chicago and a hog buyer at Fostoria, Ohio. If we buy through an order buyer we wire him the class of stock that we want with
906 the limitation of price. There are 20 to 25 buyers in the Cleveland Yard. In the selling of our products we meet the general competition of Swift, Armour, Wilson, Cudahy, Rath, Hormel, Morrell, Kingan,
907 Oscar Mayer, and several smaller packers outside of Cleveland and fifteen or twenty packers in Cleveland, all of whom sell in the Cleveland territory. We find the competition in the selling end lively and keen. The competition of Armour, Swift, Wilson and Cudahy is keen but perfectly clean and satisfactory. We do not sell any products except packing house products and by-products.

About 20% of the retailing of meat in Cleveland
908 is done by large chain store concerns. We have one retail store at our plant, in Cleveland. I presume we purchase at what are known as packer owned yards

although I can not identify the packer owned yards,
909 and in dealing on the various yards I have found no difference in respect to the fairness of the methods in one place as compared with another.

[fol. 899] Cross-examination:

I think the chain stores have something like 500 meat stores in Cleveland and surrounding territory of 40 miles. There are probably 4,000 independent stores in this
910 territory handling meats. In a general way the chain store meat departments have increased their volume in the last few years and the volume of the independent retailer has decreased. In the grand total
911 the independent retailers are larger.
912 About 8% of our sales are made to chain stores and our largest chain store customer buys probably
913 4% of our output. We have about 2,500 active customers buying every month. We prefer a large number of customers buying in quantities of not less than $5. It costs more money to sell a $5 order and deliver it than we get out of it but so long as your orders are over $5 the greater number of customers the better. I do not consider the selling of 4% of our output to our largest customer as dangerous to our business.
914 If a company is strong financially we would not want to sell it more than 10% of our output but
916 under that percentage we would consider it safe. We would be unable to extend our business beyond our present radius. Our live stock costs us too much. We can not meet the live stock cost of the Western packer. That is because of the market differential in different sections of the country. We are able to get a better price for our product within 100 miles than we can by shipping it at a different distance because it is fresher and the
917 service is quicker. We never make l. c. l. shipments.
918 When we have to make a shipment to a customer before the next peddler car is due and get it delivered promptly, we ship by express. The express rate is considerably higher than the railroad freight rate,
919 either carload or l. c. l. The railroad l. c. l. service is substantially slower than the peddler car service [fol. 900] or express. If we were to ship a less than carload shipment for a distance of 50 miles and we gauged

the leaving time of the freight train with our arrival of the truck at the freight station, we would get that meat into that town just as promptly in local freight, as we would with our car route. The shorter the distance the less difference there is between the l. c. l. and the peddler movement. With our peddler car movement we have men to meet those cars at the point of destination and handle it promptly and unload it. This is not true with l. c. l. shipment.

921 If we have a surplus of fresh meat on our hands we sell it for the best we can get. We freeze some of our meat products in the winter and adjust a fresh meat surplus by putting a larger portion of the product through the freezing process.

922 Our product is preferable in the local market to that of the Western packers because it is fresher and has a better appearance. I am familiar with the quick freezing process in a general way. If the Western packers could put their meats on the Cleveland market in just as good or better condition than ours so far as appearance and other desirable qualities are concerned, that would impair the competitive advantage we now have over the larger packers but I would not say it would seriously impair it. It would destroy whatever competitive advantage we have over them now in the matter of freshness of meats. It would not affect the condition of the

923 smoked meats and sausages. If the Western packers were able to offer quick frozen meats with their very desirable qualities at a lower price than we are able to offer our fresh meats, that also would further impair our com- [fol. 901] petitive advantage over them. However, I am assuming their ability to do that.

In using the term Western packers, I meant any packer that has a slaughtering plant at a source of supply of the live stock, particularly in the Mississippi Valley and Iowa.

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(25) THOMAS W. TALLIAFERRO, President, Hammond, Standish & Company, Detroit, Michigan, testified:

Direct examination:

925 I have been in the general packing business a little over 50 years. Hammond, Standish & Co. was es-

tablished in 1858. The original Hammond in the firm was George H. Hammond who was the first man who ever shipped fresh meat in a car cooled by ice. He was the father of the facility that made the present packing
927 business possible. Our plant is Federally inspected.
928 In 1929 we killed 338,000 hogs, 10,000 cattle, four or five thousand sheep and 2,500 to 3,000 calves. The annual kill of the company in hogs in 1922 was 268,000. Since 1922 there has been a considerable decrease in the company's slaughter of lambs and a small decrease in the slaughter of calves. Our 1929 sales were approxi-
929-30 mately $12,500,000 and in 1922 its sales were $6,600,000. There are factors which have affected the profitability of doing packing business in the last few years. There are more competitors in the field now than there were 5 or 10 years ago, both in the buying and the selling end. In addition to that, the packing business is changing every year. Ten years ago, we marketed a very much larger percentage of our products abroad, probably 30%. Today it is less than 1%. That item in itself is a [fol. 902] very radical change in the business, because really our surplus is marketed abroad, and whatever you can dispose of your surplus for, will be an indication of whether you can make or lose money on your year's business. The chain store has come in, as we all know, within ten years and that has perhaps been one of the most striking changes that we have had in the marketing of the product.
930 The chain stores have expanded very rapidly. The first meat department that the A. & P. put into their house was put in by us in Detroit in 1924 or 1925. They came to us and said they felt the need of a meat department in their stores on account of the competition from Kroger, who had already established meat markets, and said they knew nothing about the meat business and asked if we could give them a little advice. We did. Then the President asked if we would equip his market for him and recommend somebody to run it and we sold them the first lot of meats they ever bought. The President said they expected to put in 100 meat markets within a
931 year and so far as I know he did. In our locality there has been a tendency to add meat departments to chain grocery stores with the exception of one, namely

C. F. Smith, though he handles some cured meat, bacon and things of that kind but no perishable products.

932 In the Detroit territory in 1920 the Atlantic & Pacific Tea Co., had 100 stores and none of them handled meat, the Kroger Grocery & Baking Co. had 100, C. F. Smith Co., 150 and the National Tea Co. none. In 1930, the Atlantic & Pacific Tea Co. had 1,200 stores in the Detroit territory, Kroger had 815, C. F. Smith Co., 619 and the National Tea Co. 26.

933 Hammond-Standish & Co. has two distributing warehouses in Detroit equipped with refrigeration. [fol. 903] We distribute by our own trucks over a radius of about 50 miles and beyond that usually have a trucking company make deliveries. Seventy per cent of our
934 products is distributed by auto truck delivery. We have never had any trouble getting all the refrig-
935 erator cars we wanted either from the railroad company or car company or from the packers. When we sell abroad we use refrigerator cars to the seaboard. We ship by refrigerator cars to Montreal and Newfoundland in the summer time and New York in the winter time.

936 There has been an increase in the use of motor trucks during the last 8 or 10 years. This has been
937 brought about largely by the improvement in roads. The motor truck delivery now enables us to make a contact from point of origin to our customer quicker than the railroad. The railroad is out of date in that respect. There is economy in use of the auto truck as compared with the railroad because you save two deliveries and oftentimes save the expense in the difference in the kind and quality of the package that you ship in, the handling being much more gentle than on the railroads. Other concerns such as Wholesale grocers are now making their deliveries by motor trucks.

938 In the selling end of our business we encounter keen competition around Detroit. At the present
939 time there are 27 uninspected killers in Detroit that slaughter cattle, calves, lambs and hogs. In 1920 there were only 4. One of these uninspected slaughtering concerns at the present time kills more lambs than all of the Federally inspected plants at Detroit put together. None of these 27 plants have Government inspection.

There are 5 Federally inspected packers in the Detroit territory. They have not increased any in 10 years.

940 In the Detroit territory there are also 23 sausage manufacturers that manufacture sausages, boiled [fol. 904] hams, smoked meat and do a general line of packing except slaughtering. In 1920 there were 4 such concerns.

941 We buy our live stock in the usual open markets, Chicago, where we have a buyer, East St. Louis, Omaha, Kansas City, St. Paul, Sioux City, wherever we can get them or wherever they look reasonable to us. We do a little direct buying occasionally but do not find it so satisfactory.

942 It is my judgment that no group of men nor concerns engaged in the packing business could maintain artificially or unreasonably high prices for any period of time. All that you have heard about that—there is nothing to it. You can not maintain a price that is even a fraction above another market but what it is flooded the next day with products. A butcher in Detroit can telephone over to Chicago at two o'clock in the afternoon and the product is at his door at eight o'clock in the morning, as quick as I can deliver to him, and I am only a mile and a half away. With the present rapid dissemination of market news, artificial manipulation or depression of prices to the harm of the producers is not possible in the industry.

943 In 1920 there were 350 chain stores in Detroit and in 1930 there were 2,660. Our company sells about 10% of its output to chain stores. We get the same price from them that we get from everybody else. Anybody who buys the same amount of the same product gets the same price but there is a difference in price made to the one who buys a large quantity as against the one who buys a small quantity if delivered at one time. The chain stores buy in larger quantities than any average small one can do and on account of their quantity buying their unit prices are lower than that of the small buyer.

[fol. 905] Cross-examination:

947 The increase in our business from 1922 to 1929 is influenced to a certain extent by an increase in the price of meat products, but it is also due in a very large

measure to the increase in population in Detroit, which has been very considerable in ten years. The price of meat products has increased since 1922. I would not say substantially because some articles may be fully as high now as they were then. I think that taking it as an average there is some advance but not a very material one.

948 The radius of our motor truck delivery is 25 to 50 miles. There is no limit to the distance we serve by rail. We go to the end of the rails when the customer is located there. We do that as a matter of practice. I mean we often sell in San Francisco and Seattle always in carload lots. We do not operate peddler cars but did at one time. Everything in that nature is handled by motor truck now. We use the commercial truck line up to a hundred miles and everything beyond a hundred miles is in carload lots, except on the D. & C. and Cleveland boats.

949 We ship pooled cars. At long distance it is the rule to pool orders. There may be a dozen orders in the car. We ship it to one man and thereby secure the carload rate. When it gets to destination it is distributed among the different buyers in the town. This man is usually our representative there. We have no

950 branch houses. In case we have to make less than carload shipments we usually employ the motor truck and beyond the motor truck radius the interurban and occasionally we express, but not often because the handicap is too great in that respect. It is only used in emergencies. We do not avail ourselves of railroad package car service L. C. L. because it is slow. They have universal trucking [fol. 906] companies that do more effectively what the railroads are not able to do; that is, these universal trucking companies assemble shipments at one place and load those shipments into a car and consign to their office in which the consignee is located, thereby securing the

951 carload rate. When we do that we have to pay an additional fee to the trucking company, but usually we get less than the local rate but not quite so good as the carload rate. There is a saving for us and a saving for the customer and a very material decrease in time. The company which assembles these shipments is the universal forwarding company. If I said trucking company, I misspoke myself. The ability of the forwarding company to render this service depends on its ability to assemble a sufficient quantity of goods from its various customers to

make up a carload going to a place where there are sufficient buyers to buy that carload. Possibly some de-
592 lay might occur, but they usually get enough shipments together at the different large centers. They do not take in the small town but take in the larger towns say in New York, Baltimore, Washington, San Francisco, Seattle and Chicago. Only the large cities where the rate is high and the distance is great. We make no attempt to serve customers beyond this 100 mile radius in this manner in smaller towns where they could only be served by shipments in L. C. L. shipments. The railroads offer refrigerator package car service from Detroit two days a week to New York, Boston and Philadelphia and every other day to Chicago. I think Washington is one day a week.

953 It is not possible to ship by these refrigerator package cars to any point on the line between Detroit and its destination. The railroads do not furnish refrigerator package car service to intermediate points. That [fol. 907] is done by the peddler cars and only so far as a packer can handle it by peddler cars can he serve
954 those points. Our competitors use motor trucks for delivery in the same way we do. In about the same radius. And I should imagine that their motor truck delivery has proceeded over the past ten years about apace with ours. Any change which has taken place affects us and them equally.

955 It has always been more or less the practice for wholesalers to sell food products to retailers at certain times of the year for future delivery in succeeding months, but this has decreased and the practice of the so-called hand-to-mouth buying, by which I mean buying for immediate rather than future needs, has increased very materially in the last two years. The desire for quick
956 deliveries and small inventories has been increasing for some time. This hand-to-mouth buying has emphasized and increased the importance of quick and prompt deliveries from wholesaler or manufacturer, to the retailer. It would be difficult to estimate this increase in terms of percentage. The result of this hand-to-mouth buying is to put out of the competitive picture absolutely the
956-7 wholesaler who is not in position to make these quick and prompt deliveries as compared with the one who is in that position.

957 The large packers, such as Swift and Armour compete keenly with us in our territory. We have a little advantage over them as we can inject more personality in our business than the big fellow. I do not know
958 of any other advantage. We buy on the same market, sell on the same market, pay the same prices, labor conditions are about the same, and about the only advantage we have over them is we can shake a man's hand a little more often and perhaps do a little favor that the other [fol. 908] fellow cannot do. It is also self-evident that we can offer meats to the public in a fresher and more desirable condition than the large fellow because the nearer you are to the date of slaughter and the point of consumption, the more pleasing and fresher the product will be. We can get a slightly higher price for our meats than the western packers from our customers in Detroit, but we cannot from the chain stores.

We are watching the quick-freezing process awfully close. It means an additional revolution in the busi-
959 ness. We have had enough of them in the last ten years to suit me and I am afraid we are up against another one. The quick-freezing process cannot enable a western packer to place his meats on the table of our customers as fresh and with as good a flavor and equal in quality to the meats which we sell them in fresh condition. He cannot deliver a frozen article in the same condition as a fresh article. It may be of the same food value but it will not look the same and it is not the same because it is frozen. It is not in the same physical condition as if it were not frozen though the flavor might not be impaired at all.

There is probably no difference on the table but
960 to the buyer there is a difference, because the buyer has been used to receiving unfrozen meat. It is an entirely different looking article and it is a matter of education before they will, in my estimation, accept it on an equality. I do not think that after this educational process has been completed that our competitive position will be seriously affected. I do not believe that the packer can freeze the meat and put it up in packages and deliver it as cheaply as he can today. And I do not believe there will be any difference 10 years from now.

[fol. 909] We buy our live stock from the same points as our larger competitors. We buy the largest per-
961 centage outside of Detroit and are buying less and less at home and more at distant points. This is because the local competition is so much greater and there are so many more animals slaughtered by local people than there were 10 years ago. We have been cut out of that trade very largely.

962 When we buy cattle or stock at distant points it has to be shipped to Detroit for manufacture. As compared to our packer competitor, buying and killing on those same markets and shipping the product to our territory for sale, we are at a disadvantage of a dollar a hog and in some instances more. Hogs bought on the same day and killed in central Iowa and hogs that were bought that day and shipped to Detroit, which would be the third morning, those hogs after paying charges—freight and other incidentals, would stand the buyer at least a dollar more, the product would. We make up that additional item of cost in competition with the western packer by the difference in offal and the small premium we get for fresh cut meats. We try to get more for the fresh cut meat. Sometimes we get a very material difference and sometimes we cannot. But Detroit being a large meat consuming center, and with a large foreign population, we are able to sell our offal to better advantage than at almost any
963 other point in the United States. This cost differential is due to the fact that there is about 25% average shrinkage in dressing; that is 25% of this freight rate right away that you have to pay on a product that is absolutely useless. In addition to that, every day that the hog is in transit he is actually worrying and shrinking in the meat about a half of one per cent for each 24 hours, which in the case of two days would amount to 1% which [fol. 910] would be in the neighborhood of ¼¢ per pound. Some times the actual rate per hundred pounds is less on live stock than on meat products and some times the reverse is true, but it is never as low per pound of meat as the rate on the meat itself. The person who buys live stock and transports it a distance to manufacture is at a cost disadvantage as compared to the person who slaughters it at the point of purchase and transports the finished

product to the same point, other costs being equal. The greater the distance, the greater the handicap.

966 Ten per cent of our total sales go to chain stores. The best customer we have on our books today is a chain store which buys about 50% of our total sales

967 to chain stores. When I said best customer, I meant the largest in volume. This customer usually takes our advertised goods which we are very anxious to push, therefore it is desirable. If we had to depend upon a half dozen customers for the sale of all our products, it would not be so desirable as to have many customers. I should estimate that we sell to 3,000 or 3,500 customers. I think it is desirable to have one customer take as high as 5 per cent of our total business. It saves selling expense on that part of it and it is a steady outlet. It would be equally desirable if he took 10% of the class of goods that he takes.

968 We used to handle canned goods at wholesale but discontinued it about 10 years ago because it was not profitable. The chief factor was that we could not get enough over the cost to pay the expenses. We never handled them at retail. We handled them more especially to make weight in our cars because we had at that time three or four peddler cars. When we discontinued han- [fol. 911] dling the canned goods in peddler cars, we could not get enough weight to make up a minimum shipment and it cost a penalty on the railroad charge which was too heavy, so we just threw up the whole thing and went out of it. Before the advent of the chain store, we used to

969 be able to pick up quite a few orders for canned goods in the local towns through which these cars traveled but the development of the chain store made it different and the automobile and good roads finished it. At one time the peddler car minimum was 20,000 pounds but afterwards it was reduced to 10,000 pounds, I think. If we got help to make up the minimum by loading canned goods with our meats, that would reduce the penalty otherwise chargeable against the meat. But even so,

970-71 the quantities we were able to handle did not justify continuing this service, because the automobile came in and did the same service, enabling our customers to go to adjoining towns and buy their canned goods cheaper than we could.

972 In my opinion, it is impossible for any agency in the packing business to fix and maintain a price substantially above market values or to depress live stock prices below market values.

973 The thirty per cent of our exports that I said had been lost are supplied by local production. The foreign countries are now producing more than heretofore, excepting England.

978 The Atlantic & Pacific Tea Co. does not do any slaughtering. I do not know of any chain system other than Kroger which is doing slaughtering. A. & P. and some others slice their own bacon. The 979 practice known in the retail trade as loss leaders used to be practiced much more than it is now. That practice consists of putting certain articles or com- 980 modities on the market at a low price for advertising [fol. 912] purposes, without particular regard to making a profit over cost on that particular item. The object is to draw the public to the store. This practice affects both the meat and grocery line. This practice may be used in either meat or grocery lines according to which they think will attract the more attention. In grocery lines it is applied to both branded and unbranded products. But in meat lines, seldom to unbranded goods.

981 Until now, the use of branded labels or names on meats has been confined principally to cured and smoked meats. Now it is attempted in two ways to extend that customer demand—one through the Birdseye quick-freezing process and the other is through cutting up the different articles that go direct to the kitchen and wrapping them in packages so that the consumer can identify 982 the article. The use of brands has been extended into fresh meat only on a small experimental basis.

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(26) HENRY NEUHOFF, President, Neuhoff Packing Company, Nashville, Tennesse, testified:

Direct examination:

983 I am President of the Neuhoff Packing Company and have been since it started operations in 1907. The company handles a general line of packing house products. In 1929 we killed over 120,000 hogs, 15,000 cattle,

10,000 sheep and 15,000 calves. Our kill in 1920 was considerably less. I think our hog kill ran around
984 65,000 or 70,000. It would be fair to say our kill was almost double in 1929 as compared to 1920.

The Neuhoff Packing Co. has a controlling interest in the White Provision Co. of Atlanta, Ga., engaged in the same line of business. That company killed in 1929 about 160,000 hogs and probably the same number of cattle we did though [fol. 913] not as many calves. There has been a considerable increase in the business of the White Provision Co. during the last four or five years.

985 Neuhoff Packing Co. operates about 20 car routes. We lease refrigerator cars. The White Provision Co. leases refrigerator cars also. We have no difficulty in getting cars. Both companies make deliveries to customers by motor trucks and this has been increasing in recent time.

987 The Neuhoff Packing Co. buys the major portion of its live stock at Nashville. The White Provision Co. obtains its live stock from various sources, but buys a good deal at Atlanta, Ga., and Tennessee and some from St. Louis and Kansas City. Sometimes Neuhoff Packing Co. buys at St. Louis and once in a while in Kansas City. We have a salaried buyer at Nashville. Our purchases at East St. Louis are made through an order buyer.

988 Swift and Armour buy on the Nashville yard and there are a good many other packers from the East who come there to buy. The competition there is very strong. We do some direct buying from the surrounding territory through middle Tennessee and part of Kentucky. We have our own yards surrounding our plant.
989 About 70-75% of our hogs are bought this way. The White Co. does very little direct buying.

Both the Neuhoff and White companies are Federally inspected plants. They sell mostly in the southeast.
990 And we meet a great deal of competition in selling. All the packers sell through that territory. The competition of the large packers is very fair. I think we are on a fair basis with them.

[fol. 914] There is one uninspected plant in Nashville and several in Atlanta, that is, pretty good sized sausage
991 factories and small killers and also a good many local butchers who do their own killing. In some

respects these concerns have an advantage over us. They do not have to build their plants according to government specifications and maintain certain sanitary conditions. They have a lower cost of doing business.

Cross-examination:

We sell to the chain stores in Nashville and Atlanta and in some instances at lower prices than to inde-
992 pendent retailers, as they buy larger quantities as a rule. Armour and Swift sell to chain stores also at both places. A good many times they are lower in price than we are, though some times we must be as low or lower than they are because we get some of the business.

Referring to our direct buying, we do not buy the hogs except when the producers bring them to our plant. The farmer trucks his own hogs in. Other packers buy at other points and have them shipped to them. They go out and solicit or have an agent out in the country who buys
994 for them. The packers who buy that way compete with us. The Birmingham packers, and even Kingan at Richmond, buy a good many hogs in Tennessee.

994 We sell the majority of our products within 100 miles of Nashville. A good deal of them are delivered by motor trucks. We ship some by express and some by peddler cars and also use commercial trucks. We use some railroad package freight but not on perishables because the railroads do not operate any refrigerator pack-
[fol. 915] age cars as a rule. Any one desiring to make shipments of perishable goods in LCL quantities, would have to express them or ship by motor truck. The commercial truck lines operate as far as 150 miles.

996 We sell between 10 and 15% of our products to chain stores and probably one-fourth of that goes to our largest single chain store customer. I do not consider that portion of our business to be in any way disadvantageous to us, or that it threatens our market position at all. I estimate that from our Nashville plant we sell
997 to from 2,500 to 3,000 customers. Part of our ability
998 to compete with the large packers depends upon ability to offer fresh meat, or fresher meat than they offer. If the western packers were able to put
999 into operation a process for placing on the tables of consumers in our territory meats that are just as

appetizing and desirable in flavor and of quality as the meats which we sell fresh, I do not know that that would affect our competitive advantage in any way. I think being a home concern there, we could compete with them. I think the people would continue to patronize us because we are a home industry. I think the public desire to hang on to home industries and home business has restricted
1000 the growth of the chain store though the chain stores have grown substantially notwithstanding that. Our largest chain store in Nashville is a home concern.

1001 (27) JOSEPH P. MURPHY, Vice-President and Treasurer, Blayney-Murphy Company, Denver, Colorado, testified:

[fol. 916] Direct examination:

I have been an officer of the Blayney-Murphy Co. for 25 years and was with the Cudahy Packing Co. at various points for about 10 years prior thereto.

The Blayney-Murphy Co. does a general meat packing business. In 1929 our kill was 20,355 cattle, 96,101 hogs, 5,409 calves and a few sheep. The Blayney-Murphy Co. started business in 1924 and its kill at that time was about 15,000 cattle and 60,000 hogs, some calves and a few sheep.

The company's percentage of profit on invested capi-
1003 tal was 9.1% in 1924, 6% in 1925 and 9.4% in 1926, 1.9% in 1927, 9.5% in 1928, and 4.8% in 1929.

1004 Our plant is Federally inspected. We sell our finished product in the Rocky Mountain region generally designated as Wyoming, Colorado, New Mexico, and portions of the states adjoining; portions of Texas, Arizona, a little of Kansas, a little of Utah, a little of Nebraska, and South Dakota. We have 9 or 10 car routes. We own three and lease approximately 20 refrigerator cars and never have any difficulty in gettting a sufficient number of cars. On one or two occasions we have
1005 borrowed cars from Armour and Swift. We have some route shipments by freight and a good deal of public utility truck service. We ship by these trucks to Northern Colorado and up as far as Cheyenne, about 110 miles from Denver. The use of the common carrier trucks

began in about 1921 or 1922, but it was not very satisfactory until two or three years later. The use of that service has expanded and increased considerably in the last few years and is much more dependable. We have a branch house in Denver and one in Pueblo.

[fol. 917] In buying live stock at the Denver Union Stock
Yards, we have as regular every day competitors,
1006 the Armour and Swift Denver plants and numerous
small non-inspected slaughterers and from time to time other packers have either order buyers or salaried buyers on the market. The buying end of our business
is in a highly competitive condition. We employ
1007 approximately 30 salesmen and own about 25 trucks
which we use for city deliveries. We come into competition both in buying and selling with the defendant
packers and find their competition to be very keen
1008 but very fair. I do not know of any unfair trade practices that these large competitors engage in.

Cross-examination:

1009 Last year we purchased about 25 per cent of our hogs direct. We prefer to buy on the Denver market
1010 but find it necessary to buy direct because of short receipts at times on the public market. In our direct buying, we meet as competitors practically any and all eastern buyers. They buy through what you call a collector. Swift and Armour compete with us in the direct buying.

1012 In certain territories we use straight L C L shipments considerably. The railroad refrigerator package car service is very limited in our country and those shipments are mostly cured meats which are not strictly perishable. If we are compelled to ship L C L shipments of perishable products we find the refrigerator package car service inadequate in certain territories. When we
1013 find it necesary to ship by express the transportation rate is a good deal higher but most of our stuff shipped that way is sold F. O. B. Denver.

[fol. 918] As a wild guess, I would say approximately 5 to 10% of our products are sold to chain stores, the
1014 McMarr Co., the Safeway Co., one or two smaller ones and two voluntary chains, the Red and White and the Home Owned. The latter do not pool their meat

purchases except on certain specials which they pick out and use as leaders for end-of-the-week advertising. They are usually branded, cured and smoked meats or lards, but not generally fresh meat. Between one-third and one-half of our chain store business goes to our largest single customer. I think we have in the neighborhood of 3500 steady customers. I do not consider that the proportion we sell to a single chain store is menacing to our market position in any way. If the number of customers to whom we sell were radically contracted, it would mean a little adjustment of our business. If we had to give the same service to 2,000 customers as we did to 3,000, we would rather have the additional number. You are generally able to get a little better price on smaller quantities and that is preferable unless the quantity is entirely too small where the delivery cost eats up the profit. I do not think that any of our meat packing competitors sell a general grocery line of canned goods, canned fruits and canned vegetables in our territory. None of the chain stores in our territory do a meat packing business.

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(28) PAUL W. TRIER, Treasurer and General Manager, Arnold Brothers, Inc., Chicago, Illinois, testified:

[fol. 919] Direct examination:

I have been in the meat packing business 11 years. Arnold Bros. Inc. is engaged principally in processing, the making of meat products such as sausage and smoked meats and cooked meats. With the exception of hogs, we buy our live stock already slaughtered. We have our hogs slaughtered on a free basis. We buy our live stock principally on the Chicago market. The competition there is very keen. Our annual gross sales last year were a little less than $5,000,000. About 50% of our product is sold within a radius of 50 miles of Chicago and the balance in Wisconsin, Illinois, Iowa, Michigan, Ohio, Pennsylvania and a great many other places in smaller degree. We deliver by our own trucks, by express and some

refrigerator car service. We have no trouble in obtaining refrigerator cars from the railroad.

1020 We encounter very keen competition in the selling of our finished product. We have never come into contact with any unfair trade practices on the part of the large packers. We buy our carcass meats from everybody, from Armour and Swift, as well as from other packers such as Agar, Hormel, Decker, Morrell, East Side Packing Co., Independent Packing Co., Dubuque Packing Co., Rath, Interstate, Brennan Packing Co., Hy-Grade Provision, Roberts & Oake, Boyd Lunham, and several
1021 others. We buy from Armour and Swift and then sell our finished products in competition with them.

Cross-examination:

1022 About 20 per cent of our raw material by value is bought on the hoof. About 10 per cent of our [fol. 920] products represents fresh meats. We do not use refrigerator package car service for L. C. L. shipments very much. Most of our shipments are made by express due to the service we have to give our customers.
1023 We have no car route service.

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769 (29) FREDERICK S. SNYDER, president and general manager, Batchelder, Snyder, Dorr, and Doe Company, Boston, Mass., testified:

In addition to my connection with this concern for the past forty-three years, I was during the war a member of the United States Food Purchase Board; and chief of the division of coordination of purchase, later chief of the meat division and chief of the cold storage warehouse division, chief of the division of miscellaneous commodities, all under the United States Food Administration. I am also chairman of the board of the American Institute of Meat Packers.

Batchelder, Snyder, Dorr, and Doe Company is in the business of selling perishable food products, both meat and other lines, and does all the major meat packing functions except slaughtering. It buys mostly carcasses from perhaps a hundred different midwestern packers, though in some cases live animals which it has custom slaughtered.

In either case the carcasses are shipped east and we carry forward the processing work which completes the packing and distribution process.

772 Batchelder, Snyder, Dorr & Doe Co. distribute its products chiefly over New England and the northeastern section of New York State; to a degree throughout the length of the Atlantic seaboard, to Florida and Georgia, and some exporting to the island possessions off [fol. 921] the Atlantic Coast and a small amount of export business of specialties to European centers. The products handled by the company include meats, butter, cheese, eggs, fish, wholesale fruits and vegetables and canned fruits and vegetables.

773 Our sales are from eight to ten million dollars, our profits slightly less than two per cent on sales volume, our invested capital $1,500,000, our earnings last year eight per cent on preferred stock and a little larger on common stock. Since July of last year we have
774 been a subsidiary of General Foods Corporation of New York City, which includes a large number of subsidiaries manufacturing and distributing food products, including Baker chocolate, Maxwell House and Santa coffees, jello and mayonnaise products, etc. It is not to our advantage to slaughter, because of the cutting loss which has been sustained by slaughtering packers
775-6 seventy-five to eighty per cent of the time for the past ten years. By this I mean the value of a car- [fol. 922] cass in terms of its primary parts at their market value following its cutting, as compared with the original cost of the whole plus the cost of putting it into that state.

776 Referring to the advantages of the small packer over the large packer, the small packer, having a business in a locality where his chief market is within, say, 100 miles of that locality, is giving concentrated attention to his business in that section. In the presence of a surplus of stock which he feels he must move at any time, he utilizes the services of brokers all over this country and abroad, if he has a product that is made for foreign use, or of such character that it can be used both abroad and here, and disposes of it without the burden of carrying the branch house system which the leading packers must necessarily have. The carrying of that distributive outlet throughout the

United States is a very serious burden and is becoming a more serious burden as time goes on, to the leading packers.

Distribution methods are changing rapidly the use of the branch-house system, which has been declining in recent years. The leading chains are purchasing in carload lots direct from principal or intermediate packers, shipping to their own warehouses, cutting it for the particular requirements of their own retail stores, distributing the product with their own trucks, including both meats and groceries, and so spreading the overhead of delivery and sidepassing any use of the packer's branch-house for that purpose.

Retail merchants have steadily been diminishing in numbers with the development of the chain store form of merchandising, which is more efficient. Possible chain store economies include the use of strategically located ware-
[fol. 923] houses. The rapid changes in the methods of distribution at retail, are changing very rapidly the use of
the branch house system which the packers have
777 developed. I have seen the development of that
branch house system and have been witnessing its decline in recent years. The leading chain stores are purchasing in carload lots direct either from the principal packers or from the intermediate packers, shipping to their own warehouses, cutting in their own warehouses for the particular requirements of their own retail stores, distributing the product with their own trucks, including not only their fresh meats, but groceries, so spreading the overhead of delivery, and side-passing any use of the packers' branch house for that purpose. Of course, the retail merchants have been diminishing in numbers steadily since the development of the chain store form of merchandising and will continue to do so, very probably, for some years to come, with a corresponding increase in the development of the chain store system, which is more efficient, of course, than the system which it is, in part, replacing. The over-
head of chain store organizations is spread by utiliz-
778 ing the strategically located warehouses of the chain
store concerns, which are so located that they can, with the greatest convenience and at the lowest cost supply their branch stores, not only with meats, but with groceries, fruits and vegetables, and everything which they sell. Therefore, they take out 100% loads always, bring

back their own empties which they can use for repacking and thus make the economies which are incident to utilizing their own returnable crates and containers. It is highly efficient, highly economical.

779 During the past decade the chain stores have developed very rapidly in the distribution of fresh meats, and while, for certain reasons, there appears to be [fol. 924] a slight slowing up of the process, at the moment, they will in some form continue to do that expansion because every family has a high percentage of its living bill in the form of meats, and it is to the advantage of the chain store to spread its own overhead by selling the same family both its groceries and its meats, its fruits and vegetables, in fact all the perishables which go into the household economy.

779 The chain store organizations have increased the diversity of the products handled by them steadily from a very conservative list of groceries; they have gradually expanded the groceries, and then have added meats, fruits and vegetables, and in fact about everything that sells well, that the ordinary grocery store han-
780 dles. They still try to maintain a somewhat more conservative list so as to avoid carrying dead stock, but their list is now expanded until they give a very excellent service to almost any demand that comes to them. The tendency is to replace the old-time grocery store on the one hand and the old-time butcher store on the other, with the chain food store.

The term "integration" is not widely used in our industry. It means the meshing together of interests that will naturally work together, whether of corporations, processes, or lines of merchandise.

The chains utilize their warehouses to perform what otherwise would be the wholesale function of independent wholesalers. They receive the whole cattle, cut them to meet the particular requirements of their own retail stores, which vary according to locality. That part of their business I should call processing. Their manufacturing, however, is performed by these people in addition, as, for example, the manufacture of sausage, and the mak-
781 ing of certain other products which they sell at retail. In the last decade some of the chains have gone so far as to purchase packing houses. This tendency

of the chain organizations to enter the manufacturing field is steadily widening in every direction.

Heretofore the preservation of the freshness of meat from time of kill to time of sale for consumption has been accomplished by "refrigeration" and "freezing", the [fol. 925] former referring to carrying meats at approximately 32° Fahrenheit upward, the latter from 32° downward. Due to chemicals in the meats, it requires 1½° to 2° below 32° to begin the freezing process, which is not completed into absolute freezing until we reach 68° below zero. The term "chilling" is usually applied to export shipments and means sending beef at a temperature around 30°, which slightly stiffens it but does not produce damaging ice crystals, and permits the meat to be sold abroad as fresh meat. The ordinary distribution of meats
782 from western packing houses to eastern markets in the United States is accomplished in the "refrigerated" state, not "frozen" or "chilled." Only a small fraction of 1% is frozen in the ordinary sense. In packing house coolers and in refrigerator cars, the usual temperature maintained is 31° to 32°.

784 A new freezing process is now coming into vogue,
785 known as the Birdseye process, named after its inventor, Clarence Birdseye, an Amherst College man who developed it on the basis of observations originally made in Labrador while there on business of
786 his own with the Hudson Bay Company. The term "quick-freezing process" is used to describe any process intended to be limited to the development of the microscopic ice crystal which is so small that it does not break or damage the cell wall in the product frozen.

784 The process of quick freezing, so far as principle is concerned, has been the subject of a very, very considerable number of patents; but it has been only within the last few years, particularly within the last two years, that developments have occurred with sufficient rapidity so that it has become a matter of importance and consequence to the food industries of the country. Patents, both European and American, have been issued to half a dozen, and I do not know but a dozen, different inventors with respect to the preparation of foods by various mechanical processes which they have patented.

[fol. 926] This is because of the perfection of the Birds-

eye process, which differs from others in that it uses
786 a double contact machine, freezing the meat cuts from both sides, which is four times as fast as a single contact machine freezing from one side would be, using the same temperature. The rapidity of
825-6 the freezing process is not in proportion to the diameter but roughly in proportion to the square of the diameter. That is, freezing a package two inches thick will require four times the time to freeze a package one inch thick, though the thickness is only twice as great. For this reason, in my judgment any process operating from one side only has a very close limitation.

785 An investigation made by a numerous committee representing the Institute of American Meat Packers, of which I was titular chairman, made a first-hand study of the Birdseye process at Gloucester about 16 months ago, and they reported they could find no change in the color, flavor, texture, or firmness following such freezing or in any other characteristic except that the meats were made tendered by the process, probably because the microscopic ice crystals stretch, though they do not rupture, the cell walls.

786 The adoption of this process will, in the opinion of the most competent people in the industry with which I am familiar, make a revolutionary change
787 in the distribution of perishable foods of all characters and types. It will, in my opinion, open tens of thousands of new outlets for meat and entirely change the system of packing house operations. The slaughtering process will be merged into that of packaging in identifiable packages, with precise grading following government standards, leaving at the packing house the residual, much of which is wasted through distribution with the product to the retail trade in the form of fat and bone.

[fol. 927] Packages of quick-frozen meats will come to the retail grocer for sale in the same comparative
788 form as his rolled oats or anything else that he sells. After being so frozen, the product may be sent with great success from 500 to 1,000 miles under ordinary weather conditions, and with the use of cars varying from the salt ice car up to the silica-jell car it can
789 be sent across the continent without difficulty. Refrigerator manufacturers are working on the problem of developing the right kind of individual freezer and

display cases for handling this product in retail stores, so that after the goods are sent to the grocery store in an insulated container they may be put on sale in a display section without any diminution in weight, quality, or condition. This will enable the ordinary grocer to handle these products with only the additional cost of the electricity with which to operate the storage display unit.

793 Birdseye has no monopoly on the quick freezing process. I am quite familiar with half a dozen pro-
794 cesses and I am quite sure there are quite a number besides that. I do not see how the quick freezing process can be carried forward with any rapidity for the benefit of either the public or the packers or the stock raisers, unless all the packers have the same freedom of action with respect to retailing that the intermediate packers have and the chain stores themselves have.

793-5 The result will be a great reduction in the cost of cutting and retailing. The ordinary cost of operating a grocery store is about $2 per 100 pounds, while that of the retail meat market doing the usual custom cutting is three or four times as much. Under the new plan the cost of operating the meat section of a grocery store will be from 25 cents to $1 a day, according to the size and quality of the display case involved, and including its depreciation. Aside from this, the operating cost of the meat department would be the same as that of the grocery business itself. This will make it possible to offer meat in [fol. 928] thousands of new places. Further economies will be effected by permitting the food distributor to handle a diversity of lines, both because of the spread of overhead, such as rent, and the ability of salesmen to handle solicitation for meat, groceries, and fruit at the same time.

The installation of these retail refrigerator cases will necessitate additional financing, which would no doubt be one of the first activities of the leading packer, if he were free to do so.

790 This process is applicable not alone to fresh meats but to a very considerable list of fresh fruits and vegetables and fish. It will make possible fresh fruit and vegetables out of season instead of having to resort to canned goods. Any of these products may be kept a year

or longer in this frozen state, though as a practical matter they should be sold inside of a year.

791 The General Foods Corporation controls the Birdseye process, having paid $22,000,000 in cash for its patent, together with some assets. It is already being used to the extent of a small commercial plant installed in our place from which we have been placing these goods for several months in a limited list of stores in Springfield, Massachusetts, selected to furnish a cross section of the various types of stores found in New England; and from them we are now making about 3,000 sales a week.

832 Certain meat packers have been experimenting with some of the other quick-freezing processes. Swift has spent a lot of money in the past year and has installed freezing apparatus in their branch houses to get ready to receive the products for distribution to the retail dealers. I do not know what they are using, as they are naturally doing their developing privately. Armour has done a lot of quick-freezing research work but has never distributed any quick-frozen products, and neither Swift nor Armour has used the process on a commercial scale.

[fol. 929] Fish put through the Birdseye process immediately upon arrival at the wharf are much better when
792 served at St. Louis or Kansas City than others of the same lot caught at the same time and served at Boston 48 hours after arrival, because the flavor is preserved. Pampano, for instance, packed in Florida or the Carolinas under the old process is still sweet on arrival in Boston, but the fine flavor is gone. The quick-freezing process would remedy this.

Its use has had a great development in the fish business. A small plant in Gloucester belonging to the Birdseye company started offering its goods to people who were not distributors of meat at the time, and last September they sold 1,500,000 pounds of fresh wasteless fish, representing 2,750,000 pounds of fish as it comes in the trawlers.

793 This, I think, illustrates the value of the principle and what it will be eventually as applied to other fresh food, fruits, vegetables, etc. It has already produced a noticeable increase in fishing facilities. Where trawlers were being sold for lack of use at the close of the war, we have been building them since.

816 The quick-freezing process requires totally different machines from those now used at the packing plant. While the same apparatus may be used to produce cold for a freezing room as for a freezing machine, the difference is in the direct contact as compared with air contact, or between brine emersion at, say, 29° below zero as compared with putting it in ice. Quick-freezing requires a temperature of from 29° to 50° below zero. It will require an additional machine at the packing plant to perform this particular service, in addition to existing machinery. It will increase the cost at the packing plant with respect to freezing alone, not to exceed three fourths of a [fol. 930] cent per pound, including cost of operation, depreciation of the machinery itself, and all material
817 equipment. The cost of paper and boxes and the labor of cutting, etc., would be additional to that. But the economies in freight through elimination of waste, greater salvage value of the material left behind, and reduced cost of retailing under the grocery system, will make it possible to retail the product at as low or a lower price than obtains now.

819 The same refrigerator cars can be used in its transportation as at present, because it is not necessary to maintain constantly the low temperature required for its freezing. But present retail refrigerator facilities would be inadequate even if equipped with machinery to produce lower temperatures, as they are not insulated or designed properly for that purpose. Also there
825 must be showcases capable of carrying a temperature of from zero to 10° above, preferably zero, for the preservation of the product. Meats require a colder temperature than fruits or vegetables because of the fat content. Such cases will be turned out in large
819 quantities in a few months. In other words, the re-
820 tail store handling these products would have to put in new refrigeration and showcase equipment. Because of the more compact form of the product and the elimination of waste materials and the necessity of cutting, sometimes inside, these would not have to be as large as at present, and their cost in proportion to the volume handled, including the factor of rental value of the space used, would be materially less.

821-4 On the average, a store could be fitted up with the new equipment for one half of the present cost. If the quick-freezing process be applied to perishable foods generally, including fruits and vegetables, the equipment [fol. 931] necessary to handle a combined meat and grocery store of a given volume of business would cost substantially less both to install and maintain than that necessary to accommodate the same volume of business divided between separate meat and grocery stores. The re-
824 sult would be to impel all grocers into handling meats, or vice versa, both for this reason and because as shown by the chain stores it is attended by a marked increase in their grocery business. But it is easier for a groceryman to go into the meat business than for a meat man to go into the grocery business.

833 As to arrangements with those controlling the patents for the use of quick-freezing machinery and equipment, most of the machines with which I am familiar are sold outright, other than the Birdseye machine, and no policy has yet been announced with respect to that; but I have no doubt that all the high-grade concerns who apply, who do their work on a high standard, will be arranged with on some basis. There have been no arrangements with the packers in the United States up to this time, nor any determination of policy.

835 A new plate freezer has been developed and patents on it issued, ready to be put on the market when the whole plan is launched, which will carry eight series of freezing surfaces capable of freezing seven levels at once, with a self-contained unit carrying its own ammonia compressers, so that merely by connecting it with an electric plug and a water tap you can carry the freezing process on in a corner of this courtroom, making it completely available for the smallest as well as the largest plant in
836 the country. This is also covered by the Birdseye patents, as it is an application of the same principle and is likewise controlled by the General Foods Corporation.

[fol. 932] While the best use of the quick-freezing process requires slaughtering, cutting, freezing, and pack-
837-9 aging at the same plant by the primary packer, and shipment through direct to the retailer, the chain store might prefer to use it in processing alone at a little

extra cost in order to control their own brands and their own grading.

795 The handling of a diversity of lines by a food distributor results in a spread of his overhead and an increase of his custom because of the attractiveness to the purchaser. If a retailer sells $10,000 in a given period, his rent in relation to that $10,000 worth is one-half as much per unit as it would be if he sold only $5,000 worth. The economy of utilizing the services of a salesman for the selling of different products is one of the foundations of our business. We sometimes send out a salesman who sells a thousand different items. There has been a tendency entirely aside from the General Foods Com-

796 pany to combine industries. Standard brands have been developed contemporaneously with General Foods and they follow somewhat along the same lines, and other integrations are constantly taking place in food lines.

There is keen and active competition in both the buying and selling end of the meat business. Competitive conditions are equally keen in other food lines so far as I can observe. There is no control nor monopoly in any perishable lines of food and has been none, so far as I have been able to observe, in many years. There is no such

797 thing as price control of food by any one or any group. There is no such thing as price manipulation or control in the buying of raw products. In my opinion there is no present organization or group of organizations which have the ability to put food competitors out of existence. If there were artificial price maintenance in the meat industry, competition could arise on small capital. If you start in the flour business, you would have to have a good deal of capital for a flour mill, but any one who wanted to buy a hog could go out, as Morris did [fol. 933] originally, and buy a hog and cart it down to an open lot, kill, and retail it.

798 The establishment of the chain store system and centralized buying and distributing has created a lack of use in packer branch houses. Direct buying by chain stores in car lots and shipping to their own warehouses has made it quite unnecessary. As a result many of them have been closed up all over the country.

I would say that it is impossible under present-day conditions for any group of men in the food industry to ac-

quire a monopoly of the food industry of the United States. There is perfect freedom for them to buy and sell anywhere in the United States. It would not be possible any more than you could monopolize the fish industry. Any one who can get a vessel can go fishing and sell his product. Any one that desires to sell meat at any stage can go and get it and can sell it. There is no opportunity for a monopoly. I have been in the business, without going out of it at any time, for the last forty-three years,
799 and these conditions have obtained all that time. It has not occurred yet, and the conditions are such today that if there was any period when it was likely, it is still less likely than any other time previously during the last forty years. The things that have occurred within the last ten years to eliminate any likelihood of monopoly which might have existed are the development of companies leasing refrigerating cars and development of transportation itself, the control by the Interstate Commerce Commission of all conditions affecting transportation. If you have complete freedom of transportation under equal conditions, I have no concern about any other element which might come into the situation. In referring to the development of transportation I include the increase in good roads and motor transportation as a very important factor, but, even without that, the railroad situa-
[fol. 934] tion is so highly perfected now that it is utterly different from what it was thirty years ago; and to that has been added the truck transportation which, of course, is handling a very large percentage now of meat in suburban and urban centers.

831 I am of the opinion that the large packers should have entire freedom of action so that whatever method is desirable in their own interest to adopt with reference to distribution, that they shall be free to adopt it; whether it means to finance the retailers in the adoption of the new program or to associate themselves with them in any way they see fit to do. It is a very large, new venture, requires a large amount of capital, a large initiative and merchandising ability, and I think the packers should be free to do that work in whatever manner is best in their own interests and I conceive that to be in the interests of all parties, both the public and the stock raisers.

802 I am not an official of General Foods Corporation or of any other food corporation except Batchelder, Snyder, Dorr & Doe Company. For the last year our purchase of animals to be slaughtered on a custom basis has been nil, because the cutting loss has been so heavy that it has not been worth our while to pick up the custom cutting. It is to our advantage to purchase pieces of raw product in the quantity we want and carry that process forward rather than to take the whole carcass, because that involves us in the cutting loss process ourselves; we have discontinued it now for about two years because the losses have been so heavy and so continuous during that period.

803 I would say that 98 to 99% of our products are purchased from packers other than Swift and Armour.

By cutting loss I do not mean the wastage that comes in slaughtering an animal. If you should go into the mar- [fol. 935] ket and buy a hog and it cost you $20 and the hog cost to kill, chill and cut up, an additional dollar, it would then be a cost of $21; and if the resultant product at market value, say, the lard value and the legs which become hams and the bellies which become bacon and the other parts were worth when you finished $19, you would have made a cutting loss, and your only opportunity to recoup would be in the rise in the value of such percentage of that hog which was put down for a cure as might be sold when it matured at a price sufficient to correct the situation. That has been the hope of the packer, but it has not been a highly successful situation in the past two or three years. More than half the time since the close of the Great War there has been a cutting loss on the

804 part of the packer. The revenue from by-products is all taken into consideration in arriving at the cutting loss.

808 Batchelder, Snyder, Dorr & Doe Company does no retailing but sells its products to meat markets, chain stores and the wholesale consuming trade such as hotels, railroads and steamships. I would estimate that about 10% of the Company's sales are made to chain

809 stores, and I would estimate that from 2½ to 5% of our output goes to our leading chain store purchaser.

839 We have considered going into retailing but have not thought it desirable because it involved going into the grocery business, with which I am not familiar. This would be no objection to the large packer, because he could develop a complete independent organization
840 if he cares to do so. They have the advantage of distribution facilities superior to those of any other organization in the country, covering the country in a network with about 1,000 branch houses between Armour and Swift together, and a complete merchandising organization ready to add additional items with almost no additional cost, at least relatively small additional cost. Also they are located at strategic points to service the congested areas of the country.

[fol. 936] Movement of perishable commodities in refrigerator cars is faster than that of less perishable
841 commodities, either in merchandise package service or refrigerator package service, although I am not familiar with the details of the movement.

About 10% of our business goes to chain stores, which we consider a less desirable class of business because of their concentrated quantity buying. The sales price almost always averages lower than it does when the busi-
843 ness is more widely distributed. We do not, however, consider our chain business a menace to our business. It is useful as an overhead spread as is any added business of that sort that can be brought in at a gross profit higher than the inescapable or base cost of the business. While the unit profit on our chain store sales is not so great, what we do make is a recoupment of so much on total costs. Even if it is necessary in some cases to sell to them below total cost, it is still a gain so long as it enables us to make some recoupment on fixed charges.

The greater part of our raw materials is purchased from independent or smaller packers, from whom we get a lower price on the average than from the four big packers, because the latter ordinarily do their own distributing while the smaller packers are always seeking, some of them, an outlet for a surplus which they cannot dispose of in their own territory at fair prices, and it is better to sell to us out of their territory than to cut prices in their territory.
849 The advantage in the branded article is that confidence in the mind of the buyer in a brand which has

once been purchased and tested and found to be excellent. They go back to it again, because experimentation is unnecessary. This advantage exists in favor of a branded article as compared with an unbranded article and
850 when the buyer compares one brand with another the [fol. 937] factor of comparison is the buyer's own judgment. One he may prefer to the other, and if so, he afterwards buys the one which he prefers. In any case, he has to examine it and the unbranded article, the bulk article, he is quite satisfied that it is going to vary from time to time, because there is no special incentive to keep that uniform. I think the chief value of a branded article is that there is comparison to an unbranded article rather than a comparison with another equally advertised branded article of the same sort. The advantage to the chain
851 stores from the control of their own brand will not disappear as a result of the development of the quick freezing process. They would probably sell a certain amount of Swift Premium and Armour's Star porterhouse steaks, but they would sell their own, and their own clerks would always press the sale of their own products, with the result that undoubtedly the great bulk of sales would
852 remain in the hands of the brands which they were pressing, rather than the outsiders. That is illustrated with their sales of hams and bacon today; practically—not a matter of theory, but a matter of demonstration.

853 The keen competition existing in the food industry exists in the retail field as well as the wholesale. The independent meat packers are able to secure more per pound for their products than the large packers and the reason is obvious. The intermediate independent, large, amply capitalized, concern of the kind you refer to find their business chiefly in the territory contiguous to their plant. He sells his merchandise. He does not consign it. The senior packers, operating nationally, sell, so far as they are able to do so, but they are compelled to do two [fol. 938] things which the other man escapes. They are compelled to clean up the surplus of material which comes to the central marketing areas, and they are com-
854 pelled also to consign a very high percentage of their product to their distributing houses and sell it against local demand conditions. They can not create

demand. They can only supply it. When they send an excess to the market, and that sells for less than it sells in Chicago, then their average is pulled down to that extent. They perform a service to the producer by that action. They have also kept their own plants operating at something approximating normal capacity, which is also another economic necessity for them, but they pay a price for it in the reduced income that they get from their goods shipped east. That is a serious handicap to these senior packers.

Mind you, when I take this position in which I feel
855 that the present situation is improper, in view of the very radically changed conditions, both with respect to impending developments and those which began four years ago, but are continuing to expand, I am saying that against my own personal interest. But I think in the long run, we suffer from the lack of a fair field and no favor principle. I think we all will get on further and be further 25 years from now if in the interim we work on the principle of a fair field and no favor rather than have part of our organizations in this country shackled. I think it is inevitable that these new conditions of distribution will entail a multiplicity of new problems which will affect the defendants very markedly. They should be free to deal with them.

Referring to my statement that there is a necessity of the big packers cleaning up the live stock market there are two things which compel them to do this. First, I would say that the eastern order buyers, or the away-from-the-[fol. 939] central market order buyer receives his orders from the small eastern packer to buy so many hogs of such a weight, and he buys them. He steps in because he receives his commission, regardless of what he buys. He buys them as well as he can, but he buys them. After that, the larger packers come in, according to their own needs, and what they consider in relation to the state of the market with reference to values, and receipts, and so
858 forth, and buy as they see fit. When the general orders are satisfied, there may in time of surplus be a very considerable residuum which really is not wanted. However, they must be purchased, because, otherwise, the whole stock raising business would become demoralized. You have got to have an outlet for these perishable goods, because I cannot quite conceive those hogs which are sent east being sent back again to the farms, without demoraliz-

ing the whole stock raising industry. When the packer buys those hold-overs, he gets them at their fair market value, as against the same type of competition of fair market value that the other packers, big enough to handle them and willing to handle them offer. The competition may not be as keen as it would be among the prime goods, any more than the small apple competition for them is as
859 keen as it is for the fine. The price at which this hold-over goes is simply a result of the law of supply and demand like that affecting any other live stock. The packer expects to be able to handle them, but, remember, he is going to cure one-half of the product, and it is in the lap of the Gods what will happen to them when it comes out of cure. The big packer is not under compulsion more than any other packer to buy live stock at any time unless his business judgment indicates he can handle it advantageously, but as a practical matter, he has bought it steadily and consistently for the last forty years, with which I have been familiar.

[fol. 940] I do not know to what extent the chain organizations do processing of meat. It is being done by
860 the First National Stores of Boston. They have equipped their plant with equipment for which they spent one and three quarter million dollars, and they have put in curing facilities, but to how great an extent they are using it, I do not know. Of course, slicing, boiling, in addition to curing, are called processing. This is done by some of the chain stores and not by others. There is no uniformity or rule about it. They are also running factories of various sorts other than in the meat business as an adjunct. Processing is a part of the function of the packing houses.

861 In addition to organized chains, there are voluntary chains, that is, groups of proprietors who have organized under a chain type of grouping of certain interests which they have in common for the centralized purchase of merchandise to correspond with the centralized purchase of proprietary chain stores. In the voluntary chain the proprietor retains his independence but at the same time takes advantage of all the chain store elements they can incorporate in their voluntary organization, including advertising, window display work, studies of merchandising, rapid stock turnover, etc. This move-

862-4 ment has grown quite steadily in recent years as a neutralizing factor to the development of the proprietary chain business. I think we are only on the threshold of chain store development. If it continues as in the past four years, as I should suppose, it will continue to diminish the amount of merchandise going through packer branch houses, and, further reducing the spread of [fol. 941] their overhead, and decrease the relative importance of the senior four packers as compared with the intermediate packers, because the intermediate packer can ship carloads of meat to chain store smokehouses just as well as Armour and Swift can, and it will mean a constant movement toward retrenchment on the part of the packers to protect their capital. They must find new methods to deal with the situation or change their whole method, because they cannot go on unendingly with the rising tide of business diverted from them and not make changes to meet that situation.

866 The only salvation for the big packer is to fill up his obsolete branch-house facilities to capacity by handling other lines and having freedom to move the same as the next hundred packers do. While mere freedom will not fill a branch house, if they are free to do as the next hundred of their competitors, they will find a way that will make it uncomfortable in three of the seven departments in our business in those respects in which we are now protected by this Consent Decree. We are selling three of our seven lines of merchandise protected against the four large packers by this Consent Decree.

864 The small packer can operate more advantageously than the big packer because the big packer undertakes functions which the small packer sidesteps just the same as I sidestep them in my busi-
865 ness. I let him carry the burden. The branch house is an illustration of that. There are 1,000 branch houses for the convenience of these others. It was a highly desirable thing for years, because it placed properly slaughtered merchandise, very well dressed, properly refrigerated, at central points all over the United States, for the convenience of the independent market man. But that thing has changed, of course, because even through volun-
[fol. 942] tary chains, under their management, they are now beginning the independent purchase of carload lots of mer-

chandise which was formerly distributed through these branch houses and are distributing themselves among their own membership. The branch houses are a corollary of the fact that the large packer is so large. It was one of the instruments for development when that was the sound policy to follow. It would have remained a sound policy had it not been for the development of the chain store business—a very sound policy. The branch house is still necessary to supply the remaining independent dealers who are still utilizing their services. But it grows increas-
866 ingly less consequential as less demand is placed on it, because of the change in the merchandising methods.

867 The adoption of the quick-freezing process will not stop the diminution in number of branch houses,
868 because by the elimination of waste products the same volume of meat can be handled to the consumer
869 in 20% less bulk. Of course if groceries are handled through these branch houses that will withdraw them to a degree from the existing facilities of distribution, and branch houses now employed in handling them will either become superfluous or available for something else—available to sell to somebody for salvage or other uses.

STIPULATION RE TESTIMONY

In lieu of separately stating such testimony, it is conceded that the following described witnesses, numbered 30 to 41, inclusive, testified generally to the effect that there have been a number of times in the last eight or ten years when it has been necessary for livestock producers to dis-
733 pose of their products below cost of their production; that cattle production is not being carried on
733-4 profitably this year, in the growing areas, at least. 1929 was a good year, 1927 and 1928 were pretty fair; for three or four years beginning with 1921
1039 conditions were very bad, with forced liquidations, many forced out of business, and others taking [fol. 943] tremendous losses. That the livestock producing industry is injured by excessive shipments to the livestock market at certain times of the year and the inability of its meat food products to move through retail outlets to the

consuming public. One reason for this is believed to lie in the large spread between prices of livestock on the hoof and retail prices of meat products therefrom. There has been a great increase in this spread since the pre-war days, principally during the war and one or two years following; and that the spread has increased steadily and gradually since 1913; that the retailer claims these increases are necessitated by his increased costs in every direction. The greater part of the increase in spread is between wholesale and retail prices, rather than between livestock prices and the wholesale prices of its products. Another reason is believed to exist in the failure of retail prices to respond promptly to fluctuations in wholesale prices, especially movements downward. It is believed that if leading meat packers were permitted to retail their own products; this condition would be alleviated. It is difficult to say just how this would come about, but it is believed to be to their interest to make prices such that their stocks will move promptly through to the consumer. It would also help if they could retail non-meat lines along with their meat lines, as the increased volume of business per store, and their more economical transportation and distribution, would lower the cost figure to be charged against the meat business. Wholesale prices follow livestock prices quite closely.

It is also believed that the existing conditions would be alleviated and that live stock producers would be benefitted if the large meat packers were permitted to handle at wholesale other food products in addition to meat, so that meat alone would no thave to bear the entire cost of distribution.

The live stock producers receive prompt and reliable information respecting market conditions, receipts, trading [fol. 944] and prices of live stock of the character dealt in by them and this enables them to select their own markets and times to make shipments to the best advantage to themselves to the extent that such selection is practicable in the live stock industry.

In addition to testimony above summarized, the witnesses therein specified testified as follows:

716 (30) F. E. Mollin, Secretary, American National Livestock Association, Denver, Colorado, testified:

This is a national association principally of range cattle growers, embracing 14 smaller state associations (all in the West), and many local associations and breeder organizations. Prior to my connection with it, I was for 32 years with the firm of Kent & Burk Company, large ranchers and feeders of cattle and hogs, in Nebraska. While the
718 great percentage of livestock raised in the United States is raised in the west, the great percentage of it is consumed in the east.

722 At my request, the Division of Cooperative Marketing, of the Farm Board, has prepared some data as to comparative prices of wholesale and retail cuts on the Chicago market, from 1920 to 1929. This is con-
725 tained in Petitioners' Exhibit 61. The first column shows prices of good to choice steers on the hoof, while the following columns show prices of wholesale and retail beef cuts.

734-37 I am familiar with marketing conditions on public stockyards markets from personal contact, particularly at Omaha, where I lived 16 years; also from personal observations at Denver and Chicago. The Omaha yards were considered packer-owned until a few years ago. I have also had contact with handling livestock on yards owned by others than meat packing concerns. I think there is very little difference at the present time in
735 handling livestock on the two types of yards. We [fol. 945] generally get good service at all of the public markets now. I think, however, that meat
734-37 packing concerns should be restricted from stockyard ownership in order to provide a neutral trade grounnd on which the buyer and seller meet. We think they should not own stockyards in which we are forced to send our cattle for sale. If they should again become very dominant in the trade, there are many things that could happen in the way of encouragement of rival concerns to come to the market, and things of that kind. The more competition we have the better, and if they were to take unfair advantage, as they possibly might, it would hurt our industry. Aside from that there is something in the question of allocation of receipts. At a market like Denver the packers kill a somewhat limited number of animals, and when the receipts of lambs, for instance, are heavy, they forward them to other markets. It is in their power to send them to a number of other markets, and if they wanted to send

them to a market where they owned the yard, just to kill them there and get that little advantage out of them, it might tend to depress that market. I think it is better for the livestock industry that there be an absolute neutrality so that there is no influence bearing on the question of where the receipts go. Our great problem is an orderly market, and we can work that out better if we have nothing
736 of that kind with which to contend. No particular advantage would accrue to them in shipping to their own yards rather than to another except in the mat-
737 ter of saving in yardage charges. It would at least at certain markets. I do not know that the yardage charge is always charged to packers on direct shipments. I think there are some markets where there is no charge [fol. 946] on direct shipments and others where there is. There would be just a little incentive to them to put too many lambs on that particular market, whereas if they had no stock yard consideration in mind at all, they would consider killing facilities and the matters that pertain strictly to the packing business.

1013 (31) WAYLAND MAGEE, Douglass County, Nebraska, testified:

I am the manager of a 1,280 acre farm owned by my family near Bennington, Nebraska, and have an interest in a 3,000 acre ranch in Wyoming. I am president of the County Farm Bureau in Nebraska; president of the Nebraska Crop Growers Association; director of a Federal Reserve Bank at Kansas City; and on the board of Ak-Sar-Ben Stock Show at Omaha; and on the executive board of the Nebraska Dairy Development Society.

1026 I should say that competitive conditions were
1027 present on the South Omaha market. They have been called keen there. I think that is a very descriptive word. There is a lot of competition. So far as I have been able to observe, it is keen. There
1032 are many buyers on the Omaha market. We sell, of course, to packers and even to speculators, who buy in the course of a year many times the volume that we have to sell; but we do not consider this buying power any particular injury to us.

Entering into the cost of producing our livestock, we have our capital investment, in land, equipment, machinery, buildings, etc., used on it, besides the cost of labor and other operating costs. Our fixed charges, such as interest on investment and properties, of course, runs on, no matter how little we produce; and also some of our operating costs, depending on crop failures. If we should cut down the number of livestock in our herd 50% or 75% in a [fol. 947] particular year, that would reduce very little the cost of labor necessary to handle it. In order to make a profit we have to get a price for our products sufficient to cover both operating costs and fixed charges. But so long as I could continue producing and sell for enough more than to cover these operating costs and recoup something on fixed charges, I should do so. The continuation of production does not depend alone upon our ability to make a net profit over and above total costs, including both fixed and operating.

1035 (32) WILLIAM H. TOMHAVE, Executive Secretary, American Aberdeen Angus Breeders' Association, testified:

This is a pure bred livestock record association, with over 5,500 members throughout the United States, and a few in Canada. Our total membership probably owns around 100,000 pure bred cattle, and another 100,000 grade cattle not registered; also another 150,000 commercial Angus cattle. I was one of the founders of the Better Beef Association of America; and since 1924; a member of the Livestock and Meat Board.

1037 I graduated from the University of Minnesota in 1907 and was assistant in Animal Husbandry at the Pennsylvania State College in 1908, and live stock expert to the Chinese government from 1908-1910, and live stock extension work in Minnesota 1910-1912, and Professor of Animal Husbandry at the Pennsylvania State College 1912-1925, and since 1925 secretary of the American Aberdeen Angus Breeders Association. I devote practically all my time to the performance of my duties in connection with the secretaryship. I wrote and have published a book entitled "Meat and Meat Products," published in 1925, and it is used as a textbook in a number of agricultural colleges. I

am located at the Union Stockyards at Chicago and I try to visit the market as often as I can and naturally keep posted through the market reports and trade journals. In addi-
[fol. 948] tion to that, I have had considerable experience in marketing live stock while I was connected with these several state institutions, because we always had
1038 experimental cattle and hogs and sheep in connection with our experimental work that had to be
1044 marketed. I was one of the founders of the Better Beef Association and since 1926 have been a member of the National Live Stock and Meat Board.

1038 From my observation of the selling of live stock on the public market, I have found conditions very competitive. I believe there is lively competition so far as the buyers have an outlet for the product of the live stock which they are buying.

I have never been engaged in the business of producing livestock on a commercial scale.

1055 Petitioners' Exhibit 67, received without objection, contains statistical information prepared by the Bureau of the Census as to agriculture, based on the census of 1930, similar to that contained in Exhibit 31 as to the census of 1925. It shows 6,297,877 farms in the United States as a whole, April 1, 1930.

1540 (33) MURDO MACKENZIE, Manager, Matador Land & Cattle Company, Ltd., Denver, Colorado, testified:

This company is in the cattle business and operates ranches aggregating about 1,097,000 acres in Texas and Montana. After branding and marketing what we intend to, we will have at the end of this season on our ranches about 54,000 cattle and 10,000 sheep. For two years I was president of the Texas and Southwestern Cattle Raising Association and am now an ex-officio member of its board.

1545 (34) J. F. WALKER, Secretary and Field Manager, Ohio Wool Growers Cooperative Association, Gambier, Ohio, testified:

[fol. 949] This organization comprises about eight thousand sheep men in Ohio, Michigan, and Indiana, owning

among them about five hundred thousand head of sheep, who are so organized for the purpose of merchandising their product. I also have a farm near Gambier with a flock of about four hundred pure-bred sheep, and am consulting specialist on wool marketing in the Bureau of Agricultural Economics. Our association also handles about four million pounds of wool annually direct to the mills and is affiliated with the Ohio Livestock Shippers Association, also a livestock producers' cooperative handling lambs and mutton, to which our members turn over their product of that class.

I visit the various markets contiguous to our territory. I travel quite a lot with the representatives of the
1548 cooperative commission houses in those markets and get radio reports daily when I am where I can receive them and carry this information out and talk with the producers on the subject to inform them. Our members sell most of their live stock in Cleveland, Cincinnati and Pittsburgh and some at Buffalo. The competition in the sale of lambs and sheep, we believe to be very keen and fair. There are times when the competition is limited as is true of any business because of the lack of demand. It may be slight but then we find that there are always several men who are anxious to get the products.

1555 I have never been a retail butcher, but have operated a retail grocery store in which we handled some meats, but no fresh meats.

1557 (35) W. F. RENK, Commissioner of Agriculture for the State of Wisconsin, Madison, Wisconsin, testified:

I have a farm at Sun Prairie, Wisconsin, about twelve miles from Madison, and a feed yard at Columbus, about twenty miles from Madison, embracing about four hundred acres altogether, on which we raise pure-bred sheep and lambs which we sell mostly on the Chicago market.
1558 I raise and market about 12,000 lambs each year and one or two carloads of hogs. Most of it is sold at [fol. 950] Chicago though we sell some of our hogs to Oscar

Mayer Packing Co., at Madison. We have found that when the Chicago market is in good condition there is plenty of competition from different packer buyers and also
1560 from order buyers in the East. Our lambs are usually well fed and in good condition when they come to the Chicago market and usually two to four or more packers are bidding on these lambs and a great many times order buyers from the East.

1557 I am past-president of the American Shropshire Association, American Hampshire Sheep Association, Wisconsin Livestock Breeders Association, and now president of the Wisconsin Breeders and Sheep Feeders Association.

1561 There are forty-four retail butcher shops and thirty or forty chain stores retailing meats in Madison, Wisconsin, a city of fifty-five or sixty thousand. If the number of retailing agencies were reduced to from one fourth to one sixth of the present number, so that solid trainloads of refrigerator cars could leave large centers like Chicago and drop in one or two cars at cities along the line, distribution could be made much cheaper and overhead would be much less, because ten shops could distribute quicker than seventy or eighty and it would not be necessary for three or four different agencies to cover the same streets in delivery.

1564 If the same facilities were used for the distribution of groceries and canned goods as for meats, orders for the two could be taken together and it would be done cheaper than if selling meats alone.

I have never operated a retail butcher shop or grocery.

[fol. 951] (36) JAMES TOD, Maple Hill, Kansas, testified:

1573 I have a four thousand acre ranch in Kansas and seventy thousand acres in New Mexico, on which I carry on a business of breeding and feeding livestock, marketing about fifteen hundred head annually. These are raised on the range in New Mexico and most of them shipped to the Kansas ranch for finishing and feed-
1576 ing, then marketed principally at Kansas City. I decide the number of cattle to be shipped and select the market. That is governed by no one but myself. I sell

principally to Kansas City and frequently go to market myself. My cattle have been sold to very good advantage, I think considerably better than I have heard some reports made. We have always had good competition down there. Some days we have more than others. At times we only have the four large packer buyers but occasionally we will have a good many order buyers for eastern orders come in and when they come in it is still more to our advantage than when they do not. Some classes of feeders
1581 are sold in competition with packer cattle. They have to carry what we call a good deal of flesh. In other words they have to be fed enough to make beef or reasonably good beef, but the thin cattle do not come into competition. In the early fall of 1929, the feeders were coming in and competing very strenuously with the packers on the purchase of these what we call two-way cattle, cattle that can either go into the feed lot for further fattening or cattle than can go to the packer. This year that competition was absent to a great extent in so far as the feeders were concerned and there were a number of cattle marketed this year and are being marketed now which in the ordinary course of events should go to the feed lot but are being sold to the packer.

[fol. 952] In 1921, we made a profit. 1922 was approximately even. 1923 was a serious loss. 1924 was a
1584 slight loss. 1925 was a fair profit. 1926 was a fair profit. 1927 we made a little money. 1928 we made a lot of money. 1929 we made a reasonable profit, and in 1930 we are taking a loss; but it would still be advantageous this year to continue to raise cattle.

1587-8 The big end of our capital is tied up in the form of grass, and there is no way we can realize on our property except through the means of cattle. It might be done with sheep, but I do not know anything about sheep. We have had some years when we would have been better off to have paid our taxes and other overhead and not raised anything, because the price did not cover the cost of actually handling the stock; but this year it is still
1584 advantageous to raise cattle in spite of our losses,
1588 because we cannot get out from under.

1589-90 We can cut down on our feeding operations some, because we can always stop buying feeders, but we cannot stop cows from having calves, and when

these calves grow up we have to ship them up to the Kansas Ranch and fatten them for the market.

1590 (37) R. N. GUNN, Buckingham, Iowa, testified:

I am a livestock farmer with about fifteen hundred acres in central Iowa, and am chairman of the National Board on Swine Production Policy, a member of the livestock committee of the Federal Farm Board, and one of the directors of the Farm Bureau Federation in Iowa. I raise hogs and cattle and market them principally at the Rath Packing Company, Waterloo, Iowa, where I truck them in direct to the plant under an understanding that they will give me fifty cents less per hundred than the price on the same [fol. 953] grades on the Chicago stockyards at the time, the difference being equivalent to the extra shipping
1594 cost to Chicago. I am familiar with the Chicago market. We have always felt as though we had a competitive market. We had the packers and we had the eastern shippers and the smaller packers. They are all on the market. They compete with each other as nearly as I can see. All classes of buyers and packers operate on the Chicago market and my observation is that there is competition between all of them.

1596-7 Certain researches made by economists in land grant colleges, with whom I have been in contact, developed that fifty-three million hogs slaughtered under federal inspection in 1922 brought $905,000,000 or $222,000,000 less than forty-one million hogs slaughtered under federal inspection in 1924 and 1925, which brought $1,127,000,000.

1604-6 Economic studies embracing nearly a twenty-year period, by Warren and Pearson of Cornell University, have shown that a five per cent reduction in the price of meats to the consumer has increased consumption around twenty per cent. I do not know whether the facts on which these studies were based involved a simultaneous drop in other food prices or whether it was a matter of meat prices alone falling and thereby tending to
1607 draw consumption away from other foods.

1619 (38) W. J. Fitts, Gallatin, Tennessee, testified:

I am a livestock farmer, raising cattle, hogs, and sheep. The hogs I market mostly at Nashville and the cattle at Louisville. I am president of the American Duroc Jersey Association and a director of the National Swine Growers Association.

[fol. 954] (39) James A. Hooper, Salt Lake City, Utah, testified:

1624 I am secretary of the Utah State Wool Growers Association and manager of Austin Brothers Association. The latter is a concern engaged in the producing and feeding of livestock and farming in the states of Utah, Wyoming, and Idaho, running around twenty-five thousand sheep and twenty-five hundred cattle, with about forty-four thousand acres of grazing land, and marketing ten to fifteen thousand sheep and fifteen hundred cattle annually.

The wool growers association embraces between two and three thousand wool growers, with about a million head of producing sheep, approximately fifty per cent of the sheep population of Utah.

Most of our cattle goes to the feeders, some to the packers. Most of the sheep and lambs goes direct to packers, who come into these states and purchase for their plants, and move principally to the Pacific coast.

1626 Representatives of the various packers such as Swift, Wilson, Cudahy, Hauser, Standard and other packing concerns come into Utah and Idaho and compete very vigorously with the purchasers of the fat lambs in that particular section, starting in August and buying those lambs up until along in April.

1627-28 We have probably 69 to 70% of the population living east of the Mississippi River. We have about 69 or 70% of the live stock production west of the Mississippi River. It is very difficult for us to move our live stock to the section that is far removed from our fields of operation to market that live stock. In doing that we appreciate very much that our retailer is our only outlet. Were it not for the retailing of live stock, we would have our live stock on our hands and it would be unnecessary for us to continue in business. The natural flow of live

[fol. 955] stock has been to the packer and the packer has then disposed of our live stock as best he could. If we could shorten that route through efficient handling and the best minds of the country, by reason of that efficiency could get it to the consumer at a lesser price, there would be a greater consumption of our live stock and it would not only help the consumer but a part of that would be reflected in the price which we receive. We further feel that there should be no obstacle placed in the line of marketing our products. No other agricultural product is burdened with regulation, rule or law in the marketing of their product and it is free to be marketed. But with a regulation or rule confronting us whereby the men who manufacture or process our live animals are prohibited from placing that product through their own retail stores, it entails a greater cost in getting it to the consumer. And it also takes away from us one of our mediums of putting our products into the hands of the consumer.

My observation has been that it is next to impossible for a retail meat market to do business unless it has other products. The old meat market without selling groceries and related commodities seems to have disappeared especially in our section. It takes the two, in most instances, to make a go of it. We feel that it would be much better if the two could be handled with one overhead and that it could be more economically done.

1638 I think the gluts in the meat market could be removed if some of the larger companies of the United States who are processing meats were disposed to have their own retail stores because it is a known fact that the fat lambs can only be held in the coolers for a limited number of days and if the buyer sees that these carcasses are deteriorating, they sit back on their haunches and wait [fol. 956] to buy them at a very much reduced price which causes peaks, and if a packer owned a retail store they would start to try to move these at a more nearly average price throughout the entire period.

1630 Eighty-five per cent of the livestock that reaches the big markets of the United States is slaughtered by packers who are prohibited by the Consent Decree from selling our products in a retail way. This takes a medium away from us in the handling of this livestock to the retail trade.

1631 I think it would also help for others besides the leading four to retail their own products, but they have not the facilities distributed all over the United States to do it as the others have, and for this reason, also because of their large size, the leading four would be able to do this cheaper and more profitably to themselves than the rest.

Among the smaller packers, Fry in Seattle has done retailing to great advantage, although I don't know what profits he makes or what advantage he derives from it. The Butte Butcher Company has also done this.

1641 We have hundreds of thousands of acres of land in the west that is worthless except for the production of livestock, and we can afford to produce it there and pay the freight east as cheap or cheaper than it could be produced in the east.

1645 (40) J. H. MERCER, Topeka, Kansas, testified:

I am secretary and general manager of the Kansas Livestock Association, Livestock Sanitary Commissioner of the State of Kansas, president of the National Livestock Show at Wichita, director in the American Royal Livestock Show in Kansas City, and also of the National [fol. 957] Livestock and Meat Board. The Kansas Livestock Association embraces about 11,500 members, 80% of the beef animal population, and 65% of the hogs and sheep in the State of Kansas.

1648 Kansas City is the principal market of the members of the Kansas Live Stock Association. I find that there is a very competitive situation prevailing. It is more pronounced of course on the larger markets than the smaller markets, but at such markets as Kansas City, we have competition in beef animals of eastern order buyers. We have competition from the smaller packers who are located in the territory tributary to that market, and we have the competition of the larger packers who buy on that market. I think all of the four principal large packers have slaughtering establishments at our Kansas City market. Of course we have competition more keen at times than others in a class of cattle that is fairly well finished for beef. Competitors come into the market for such cattle to go

onto the feed lots to finish, to feed, 60 or 70 or 90 days, make them a better food animal and a better beef animal. Competition as I analyze it—altogether I have been a shipper to the Kansas City market for very nearly 40 years—I have always noticed that there is plenty of competition, uniformity of prices some times, especially when there is what has been referred to here as over-supply or gluts on the market.

1059 (41) WINCHESTER P. WING, Secretary, California Wool Growers' Association, San Francisco, California, testified:

I graduated in Animal Husbandry from the University of California in 1920, and in 1926 received a degree from Stanford University. I also worked on ranches, and taught school in Arizona; later handled hogs and became interested [fol. 958] in dairying, pure bred livestock and sheep.

California produces about one-tenth of the lamb
1062 supply of the United States, and out of its population of 3,900,000 sheep our members represent 2,900.000.
1061 Eighty-five per cent of the lamp crop of our members is sold F. O. B. Shipping point instead of shipping directly to a stockyard. Our people sell to the so-called big packers, Swift, Armour, Wilson and
1062 Cudahy, and to packers in San Francisco and Los Angeles; sometimes packers from Seattle and Portland and sometimes speculators come out from the middle west and our lambs are even sometimes purchased by packers east of Chicago. There is the greatest of competition; that is, with the four packers buying direct from the producers and with the local packers in California buying direct or at the stockyards. It gives the grower the
1063 greatest opportunity in marketing his product. The grower also has an opportunity if he is not satisfied with either the live stock markets at San Francisco or Los Angeles, or the offers made for his product f. o. b. shipping point by these 25 or 26 buyers, of shipping his live stock direct to the largest markets of the east, St. Joseph, Denver, Ogden, Salt Lake City, Kansas City, Omaha and Chicago.

Sheep production in the last eight years has increased
55% in California, and 30% to 35% in the United
1064 States as a whole. Their price has dropped from 35% to 42% in the past year. Due to a serious out-

break of foot and mouth disease in 1924, practically the entire nation put embargoes against the shipment of
1066-7 live lambs from California, with some 400,000 ready for market on our hands. The large packers came to our help, took them over at practically the same price as the year previous, killed them in the state and shipped out the dressed meat. If they had not done so, they could not have gotten these lambs, and as California is the principal lamb producing state, would have been de-
[fol. 959] prived of one of their important sources of supply.

We immediately went to the packers who are
1067 under Federal inspection and asked them if they would assist us in killing those lambs in California and then shipping the lambs out as dressed lamb. Every large packer agreed to help us and did so and the prices as a result that the growers received for his spring lamb crop in that year, even though we had changed our system of marketing overnight, was practically the same as
1068 the year previous. This was, in our opinion, the finest showing that the packer is interested in the grower, because there is no doubt in our mind that the so called large packers who had the whole thing in their hands, if they had been trying to reap an immediate profit, they would have bought those lambs at half the price they did. There is no question about that. But they stood right with us and told us at that time when we first went to them "we will do our best to get all we possibly can for the producer of these lambs." This was only possible by marketing that crop as they did and it was only possible to do it through the so-called large packers because of their distributing system and their methods of handling the dressed lamb when they got them to the East through their car route and branch house system.

1087 We believe a packer if allowed to handle canned goods with his lamb can have more car routes and can put more cars on his car routes in order that he may reach the small suburban towns or country towns and furnish the public with better lamb than is obtainable there. If a packer is enabled to distribute canned goods in the refrigerator cars with his meat, he has reduced his overhead. The same salesman who sells his canned goods sells his meat. If a packer starts a car route from San Francisco

going up the north coast and because of lack of volume has to open that car at 30 miles out of San Francisco, he has a higher transportation cost per unit of meat sold than he [fol. 960] would if he had larger sales in that territory and did not have to open that car and could, therefore, get the carload rate as far north as say, 90 miles from San Francisco. Therefore, he has cut down the per unit cost of handling that lamb. The added volume that comes
1088 from handling meats and groceries together enables him to send his peddler car a greater distance before he reaches the break-bulk point and for this distance he gets the carload rate as distinguished from the peddler car rate if he breaks bulk. So there is a definite saving to the packer in the use of refrigerator cars on a car route basis in the handling of meats and groceries combined as against the packer who handles the meats alone, or against the person who handles groceries alone.

1082 Seventy per cent of the lamb consumption in the United States is in the district north of the Potomac River and east of Pittsburgh; 15 per cent is in California, Oregon and Washington and that leaves a very small percentage for the rest of the country. In these
1090 sections of the United States where they are not consuming lamb and where we believe that through cooperation of the packer, if the packer is not fettered in his distribution and in its marketing of lamb, we could reach people who could not afford other meats and they could be eating lambs today. When I say fettered, I mean the packer's inability to retail and also his not being able to handle canned goods.

We have carried on cost production studies, and find that labor today constitutes about 30% of our meat cost,
1094 feed another 30%; the remaining 40% is depreciation and other fixed costs.

As the producing life of a ewe is about five years, we have to write off one-fifth of our property value in a herd as depreciation each year. If we curtail our production 50% that does not curtail the fixed charges correspond- [fol. 961] ingly. They go right on. We try to sell at a price that will leave us a profit over all these costs; but if a sheep man thinks prices will not permit him to ship his old ewes to market at a profit, he is likely to keep them on the ranch, which will actually increase his production the following

year, at least if we have an open winter. Thus, it is possible that a drop in price this year may mean that
1096 we will have as many lambs next year as today. On the other hand, if we have a severe winter and the old ewes die off, it will lessen our lamb crop. The accident of weather is a very vital factor in the sheep business in the west. With prices of farm commodities as they are
1097 today, one may continue and increase his number of sheep, because he is losing less on sheep than on other farm activities—particularly in the east.

870 (42) TYLER F. SNODGRASS, Vice-President and Director, and executive head of the Meat Division, McMarr Stores, Inc., Denver, Colorado, testified:

This is a chain store concern organized in January, 1929, as a combination of the Snodgrass Food Company and 25 other small independent chains operating from Denver to the Coast and from Canada to New Mexico.

872 The combined chains ranged from five to 250 stores each, and the present McMarr Company has 1,497 stores, in 487 of which we operate retail meat departments.

874 Our gross sales in 1929 were $87,000,000; our net worth $11,000,000, including capital and surplus; and our profits 2½% on sales.

875 We manufacture our own butter, ice cream, and bread; roast coffee and package tea; but do no slaughtering and only a little slicing, and packing hams; but practically no processing. We have about 20 grocery [fol. 962] warehouses; but only one meat warehouse in Denver.

876 Petitioners' Exhibit 66 is our balance sheet for the year ending December 31, 1929. Out of our total
877 business of $87,000,000, meat sales aggregated about $11,000,000. Six million dollars of this amount was sold through our 487 stores having fresh meat departments and the balance of five million dollars represents sales of hams and bacon, sausage, canned meats, etc., which
878 are handled in all stores. In 1929 we purchased about 10% of our meats from Swift & Company, that is, about $110,000, and we purchased approximately $2,000,-

000 of meats from the four large packers—most of this from Armour & Swift. The remaining $9,000,000 we purchased from other packers, including possibly
881 $1,000,000 from local non-federally inspected slaughterers, who merely kill, sell the carcasses, and do no other processing. Our margin of gross profit in meat lines ranges from 14% to 18% on gross sales throughout
888 our different territories. It is greater in the meat department, because the handling cost is greater.
879-80 The other two large packers in that territory don't amount to so much as Armour and Swift. Armour and Swift dominate the western territory.

1104 (43) WILLIAM S. CLITHERO, Assistant Comptroller and Assistant Secretary, Armour & Company, Chicago, Illinois, testified:

I am a statistician, research man, and accountant by profession. On the basis of Moody's industrial manuals for the years 1920 to 1930 I have prepared certain data as to sales and other financial information regarding chain stores and food companies. Petitioners' Exhibit 69 is a financial record so prepared of the 12 grocery chain store concerns therein specified as follows:

[fol. 963] The Great Atlantic & Pacific Tea Co.
The Kroger Grocery & Baking Co.
Safeway Stores, Inc.
The American Stores Co.
First National Stores, Inc.
The National Tea Co.
McMarr Stores, Inc.
The Grand Union Co.
Daniel Reeves, Inc.
R. C. Bohack Co., Inc.
Loblaw Groceterias Co., Ltd.
David Pender Grocery Co.

It shows for these years sales, earnings, number of stores, and whether grocery, meat, or combination stores. Blank spaces indicate that information there missing was not reported for the years in question. Symbols used are

explained by notes at the bottom. The "weighted
1106-7 averages" shown at the bottom of the second table on the first page show the percentage of total earnings for the companies reported in the respective columns above to the total sales for those companies, the number of companies so computed being shown in parenthesis in front in each case. References to volumes and pages in Moody's manual, from which the information was taken, are shown under the heading, "Index," in the lower right-hand corner.

1108 Exhibit No. 70 is a financial record of the following eight food companies, as reported in Moody's industrial manuals, similarly compiled and indexed:

National Dairy Products Corporation.
National Biscuit Company.
The Borden Company.
Standard Brands, Incorporated.
General Foods Corporation.
Gold Dust Corporation.
Beatrice Creamery Company.
United States Dairy Products Corporation.

1110 Petitioners' Exhibit 71 is a financial record of 15 non-defendant meatpacking concerns compiled in the same way and from the same source, as follows:

[fol. 964] John Morrell and Company.
Beech-Nut Packing Company.
George A. Hormel and Company.
Roberts and Oake, Incorporated.
Rath Packing Company.
John J. Felin and Company, Incorporated.
Brennan Packing Company.
Miller and Hart, Incorporated.
Jacob Dold Packing Company.
Hygrade Food Products Corporation.
E. Kahn's Sons Company.
East Side Packing Company.
Oscar Mayer and Company.
Adolf Gobel, Incorporated.
Columbus Packing Company.

1111 Petitioners' Exhibit 72 is a financial record of the four defendant meatpacking concerns for the same

years, similarly compiled from the same source and checked also from figures furnished by those concerns direct, except as to Cudahy Packing Company, figures for which are taken only from Moody's.

1112 Petitioners' Exhibit 73 is a recapitulation of financial data contained in the previous four exhibits, comparing them as to the four classes of companies.

1113 In compiling the non-defendant packers' record (Petitioners' Exhibit 71), I omitted Kingan and Company because it is not reported in Moody's.

1114 (44) FRANK WALKER WHEELER, Assistant to the President, Great Atlantic & Pacific Tea Company, New York City, testified:

1116 This Company is in the chain grocery store business and its number of stores and sales during the years (fiscal year ending March 1st) 1921 to 1930, were as follows:

1921	4,638	stores; sales,	$234,420,618
1922	5,215	stores; sales,	201,096,503
1923	7,329	stores; sales,	245,964,740
1924	9,269	stores; sales,	296,461,460
1925	11,413	stores; sales,	352,031,119
1926	13,991	stores; sales,	440,023,100
1927	14,818	stores; sales,	574,087,184
1928	15,672	stores; sales,	761,402,805
1929	15,177	stores; sales,	972,799,185
1930	15,418	stores; sales,	1,053,692,882

1117 They sold smoked and cured meats in 1920 but no fresh meats. A. & P. first put in separate meat departments late in 1924, and we called such a store a "combi-[fol. 965] nation" store, selling groceries, fresh vegetables, and meats; also fish in a good many of them. On September 1, this year, we had 3,851 such stores out of the total.

1118-22 Since October, 1920, our principal facilities have increased as follows:

1. Warehouses (to which goods are shipped in carload lots and broken down for truck distribution principally to retail stores): 10 in 1920, 53 in 1930.

2. Bakeries: 2 in 1920, 35 in 1930.

3. Produce warehouses (separate buildings specially equipped to handle fruits and vegetables): 1 in 1920, 23 in 1930.

4. Butter warehouses: 1 in 1920, 2 in 1930.

5. Cheese plants (for storage and curing, located in cheese districts): 1 in 1920, 3 in 1930.

6. Creameries: None in 1920, one today.

7. Fish warehouses: None in 1920, one today.

8. Laundries: 1 in 1920, 2 today.

9. Printing plants: One both times.

10. General food factories (not including milk and salmon): 2 in 1920, 9 today.

1119-20 The principal products of our general food factories are canned tomatoes, canned pears, canned baked beans, catsup, chili sauce, jams, jellies, canned corn, vinegar, macaroni, spaghetti, cocoa, candy, peanut butter, spices, extracts, and also tin cans which we use in our own packing.

11. Milk plants (buying milk from farmers, evaporating, canning, and shipping it to distributing warehouses): None in 1920, 9 today.

12. Salmon canneries: None in 1920, 6 today, all in Alaska.

[fol. 966] 13. Coffee roasting plants: 3 in 1920, 7 today.

1119-20 We maintain buying headquarters in Brazil and Colombia, South America, for the purchase of coffee.

1123 We do no meat processing at any of these plants.

1126 We have some of what we term meat-cutting plants that take whole carcasses and break them down into small units for distribution, more in line with the demand of each store, that is, to fit the selection of meat that we ship into each store to the demand in that neighborhood. These plants where we do that work have Federal inspection.

1123-24 Our profit for the year 1920, which is not reported in Moody's, was $5,803,333, or 2.48% on volume of sales and 22.95% on investment. For certain other years our profit percentages were as follows: In 1925, 2.72% on sales, 19.14% on investment or net worth; in 1930, 2.49% on sales, 22.08% on investment. Ac-
1136 cording to my recollection of statistical studies made by our Company, the total meat sales in the United States at retail values through all sources amounts to between three-and-a-half and four billion dollars.

1139 It is the practice in our business to offer special articles from time to time at a reduced price. This is done for advertising purposes and also in order to distribute our profits in excess of 2½% net on sales. The company endeavors to earn 2½% net on its sales and the actual return last year was 2.49%. When we find from our figures that we are running somewhat above that we distribute the additional profit by means of special sales at
1140 lower prices. The volume of these specialty sales is about equally divided between meats and non-meat lines.

1125-26 We operate over practically all of the country from the eastern seaboard and Canadian border to the Gulf, and as far west as Kansas City and Dallas, and have recently opened a few stores in Los Angeles, Califor-[fol. 967] nia, having retail stores in 36 states in all.

Out of our total sales of $1,053,000,000 in 1929,
1127 our sales through our 3,851 meat departments totalled $110,082,602. The cost of meat so sold was $87,-262,479, including the cost of the cutting we do, which is not very large. The difference represents gross profits on these meat sales of 20.75%.

1128-31 Government's Exhibit No. 4 is a letter from Mr. Connor, our national fresh meat representative in Chicago, showing approximate percentages of products handled in our meat departments purchased from Swift, Armour, Wilson and Cudahy, and the remaining independent packers. Mr. Connor is the same source we would consult for such information, and his statements are authentic. The total upon which these percentages are based is the $87,000,000 total meat business that I previously referred to. We purchase a great many other food commodities be-

sides meat, principally from manufacturers, very little from intermediate jobbers and wholesalers.

1132-5 Government's Exhibit No. 5 is a letter from our Mr. Parr, upon whom we would rely for such information, showing the approximate total amount of our purchases from leading food manufacturing companies such as are commonly known as "food integrators," handling a diversified line of food commodities.

1145 With rare exceptions, our business is done on a cash and carry basis. We do not make deliveries.

1146 The reduction in the number of our stores in 1929 as compared with 1928 was due to the enlargement of some stores that were in a neighborhood with two stores close together. We would open a larger store in between the two that served the same trading area. The reduction in stores was not due to a lesser amount of business. Our sales figures went up while our stores went down.

[fol. 968] (45) HENRY C. BOHACK, President, H. C. Bohack Company, Inc., Brooklyn, New York, testified:

1149 This concern is in the chain grocery and meat
1150 store business in which I started 42 years ago with
1151-8 a single store in Brooklyn. I now have 661 stores, of which 260 have meat departments. We have our own bakery and operate warehouses into which we ship in carload lots and from which we distribute in trucks to our stores, combining meats, groceries, etc., in the same truck. We have a sausage manufacturing plant and smoke and cure hams, but do no slaughtering. We also handle chickens, eggs, butter, and cheese, and loose milk; that is, we buy the milk from the milk men and sell it in the stores and do not handle it from the warehouses.

1150 We started alone with groceries and we have added meat and we added pork and we added bakeries and vegetables, fruit and fish, and we have a little gasoline station and rubber tires. We sell anything that we find will reduce our overhead. We are working very hard on that. You have to have a great system and work hard to keep down your overhead. You can only do that

when you get two or three departments under one roof and sell the goods reasonable so that the consumer saves money.

1151-58 Petitioners' Exhibit 74 shows the growth of the Bohack store business since 1920, with number of stores, number having meat departments, total sales, net earnings, and total meat sales, for the years 1920 to 1929. Our stores are all located in Brooklyn, Queens, and Suffolk County, Long Island.

In selling fresh meat we do the cutting in about 260 of our stores, but in 50 of our stores we have a refrigerated case in the grocery store in which we handle and sell packaged meats cut at the central plant, wrapped up, chilled, and kept at a temperature of about 30°. It is im- [fol. 969] possible to do this unless we can sell in a small radius from the cutting point. Our greatest distance on these products is 20 or 25 miles.

We buy our meats, including those that we process, from Armour or any of the standard packers that we can get it from, and find that they compete for our business. The large packers are better equipped to handle the large orders, and we buy our car lots principally from them.

The complaint that they are not getting enough to enable them to make a profit is not peculiar to the large
1161 packers. Everyone thinks he sells too cheap, and that is the general cry with everybody when he is in business. Our warehousing overhead costs us around 7% on the volume of sales. That includes getting it into the stores and getting it out and taking care of it. We have a warehouse in which we have space we could use for another twenty million dollars of business.

1162 The amount of space needed depends on how good your buyers are and whether you get stuff in there that does not go out very quickly.

1163 There is a more or less constant volume of food products from year to year moving through the various distributing channels, including chain stores, independent groceries, and meat dealers, part of which of course flows through our warehouses just as part of it flows through the packer warehouses. If the packers should take up retailing their own meats and handling grocery lines on a large scale, it would increase the quantities of these products handled through their warehouses, but would cut down proportionately the amount left to

handle through other distributing warehouses. The quick-freezing process would not help this, because it would cut down the necessary warehouse space required in proportion to value of the product, and would increase the surplus available in all lines, including ours.

Unless something happens to increase the total need for [fol. 970] warehouse space, any increase in the use of space by one line of distributors will be only at the expense of another line of distributors.

1165-6 We use "leaders" in our business every week, and for this purpose sometimes select goods that do not move fast enough and we wish to get off our hands, whether we make money or not. Another purpose is for advertising, that is, to get customers into the store and give them a bargain on something. Each department has its own choice in selecting them, both in groceries and meats, but there is no tendency to select the popular brands of meat of the large packers and use them as leaders.

1170 We do not put meat markets in many of our stores because we haven't the space for them or room for refrigeration. You need spaces at least 20 by 80 or 25 by 80, and they are hard to get.

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(46) HERBERT PEARCE BROWN, Comptroller, National Dairy Products Corporation, New York, testified:

1174 This concern is in the dairy products business, handling milk, ice cream, butter, eggs, buttermilk, dried milk, and semi-solid milk, in the dairy line, and also sausage which we make in the Deerfoot Farms plant at Southboro, Massachusetts.

1175 We manufacture ice cream and I think we are rated the largest manufacturers of ice cream in the United States.

1175 We have from time to time acquired existing corporations and National Dairy is a combination of them. One of our subsidiaries, Sheffield Farms Company, has around 300 retail stores in New York City. I do not know how the Deerfoot Farms sausages are distributed. Kraft-Phenix Cheese Corporation is one of our subsidiaries acquired this year, and manufactures principally [fol. 971] cheese. National Dairy Products was not or-

ganized until December, 1923, and our sales have been reported publicly only since 1924. Figures in Moody's
1181 manual for years prior to 1924 are the consolidated figures for the constitutent companies which later came into National Dairy Products. For the year 1929 our consolidated net sales were $300,000,000; our net profit $21,576,176, or 7% on net sales; and our net worth, capital and surplus, was $110,603,065, on which our earnings were 20%. In addition to National Dairy sales, Kraft-Phenix sales for 1929 were around $80,000,000.

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(47) FRANK P. ZIMMERMAN, Secretary, Gold Dust Corporation, New York City, testified:

1185 This concern manufacturers and distributes a varied line of products, including soaps and shoe polishes, and a food line consisting of nut margarine, salad dressings, pickles, preserves, honey, flour, and cereals.

1186 We manufacture every one of our products. Our manufacturing plants are located at Bayonne, Balti-
1190 more, St. Louis, Minneapolis, Duluth, Kansas City, Buffalo, and Indianapolis in the United States and in Montreal and Hamilton in Canada.

1186 It represents a merger of constituent companies manufacturing all of the products we distribute.

1187 We do not include our sales volume in our published financial statements, such as those reported in Moody's manuals.

We sell to chain stores, wholesale grocers and distributors, but do no business direct with retailers except in the case of chain stores.

1188-9 The present concern was organized in 1923. Petitioners' Exhibit 75 includes six annual reports of the Gold Dust Corporation for its fiscal years ending August 31, 1924, 1925, 1926, 1927 and 1928, and the calendar year ending December 31, 1929.

1190 We do business throughout the United States and in Canada, with some export business with foreign countries.

[fol. 972] The largest part of our business in food lines is handled through about 325 entirely independent
1191-4 distributors scattered throughout the country, and not direct to chain stores or other retail purchasers. The chain stores buy directly from these distributors, and we come in selling contact with the former only as to a small part of our food business. This does not include milling products, however. They are sold direct to the chains. Our milling products represent around 40% of our total sales. Soap and shoe polish are also sold direct to chains.

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(48) ELMER F. PANOR, Accountant, Kroger Grocer & Baking Company, Cincinnati, Ohio, testified:

1195-7 This concern does a chain store grocery and meat business and operates two slaughtering and meat-packing houses at Columbus and Cincinnati, Ohio, the products of which we sell through our retail stores.
1203 The Cincinnati plant we have had over 20 years; the Columbus plant has been acquired in the last eight years. We do no other slaughtering, but have one processing plant for sausage in Detroit.
1198 We also have 12 bread and some cake bakeries scattered over the country, 5 dairies, our own candy and beverage factories, and plants for the packing of teas, spices, olives, and other bottled goods, and the roasting of coffee, the products of all of which we retail in our own stores.
1199 The lines we handle include staple groceries, dairy products, meats, fish, poultry, bakery items, and a general food line.
1199-1201 The following table shows the number of stores operated by the Kroger Co. by years from 1920 to 1929, and the number of general food stores handling groceries, meats, fruits and vegetables, that are included in the total stores:

[fol. 973]

Year	Total number of stores	Combination food stores
1920	903	276
1921	992	455
1922	1,413	611
1923	1,800	806
1924	2,127	985
1925	2,856	1,279
1926	3,369	1,417
1927	3,749	1,565
1928	5,260	2,711
1929	5,575	3,191

1205 At the present time, October, 1930, we have approximately 300 less stores than we had on December 31, 1929.

1202 Our percentage of profit on sales since 1920 has ranged from 1.37% in that year to 3.03% in 1925. Our gross sales have grown from about $50,000,000 in 1920 to $286,000,000 in 1929.

1203 We operate generally in the middle west, bounded by Michigan, Pennsylvania, Mississippi, and Missouri.

1209 (49) EDWARD W. SHINEMAN, Secretary and Assistant Treasurer, Beech-Nut Packing Company, Canajoharie, New York, testified:

This concern handles food specialties such as bulk and sliced bacon, hams and beefs packed in glass jars and cartons, peanut butter, conserves, jams, jellies, preserves, marmalades, pork and beans, prepared spaghetti and macaroni products, and condiments; also chewing gum, mints, fruit drops, candy drops, tea biscuit dainties, and coffees.

1210 We have plants at Canajoharie; Brooklyn, New York; San Jose, California; Hamilton, Ontario; Fairmont, West Virginia; and Utica, New York.

1211 We do no slaughtering and handle meats only at our main plant at Canajoharie, where we cure and smoke pork bellies and hams and dry beef. We have an arrangement whereby our products are sold through

1213 about 3,400 retail outlets of the United Cigar Stores throughout the country, but there is no ownership

[fol. 974] relation between us. United Cigar Stores acquired at the time 50,000 shares in Beech-Nut which they have since transferred to Gold Dust Corporation
1219 with whom, as a matter of trade knowledge, they
1211 are now affiliated. We also sell to wholesalers.
1212 In 1929 our sales were $25,000,000; net earnings before tax was deducted were $2,700,000 or 11.9% on sales.

We buy our meat products principally from Kingan and Company, Parker and Webb of Detroit, and Libby, McNeill & Libby—occasionally elsewhere.

1219 (50) HARDEN F. TAYLOR, President, Atlantic Coast Fisheries Company, New York, testified:

1220-1 This concern is in practically all branches of the fish business. I have been with it since December, 1923, and before that was with the United States Bureau of Fisheries since 1905, in which I was Chief Technologist for the last five years and, for the last year, Chief of the Division of Fish Industries. In my researches for the
1222 Bureau I had to deal with the key problem of the fish industry, the problem of perishability. Seafoods are the most perishable of all foods in this country.
1223 Fish are caught most abundantly in the warm seasons when, due to the popular belief that they are not good, the demand is not very heavy. In the winter, when the demand is heavy, the catch is small. Consequently we have a huge over production in the summer, with great losses of perishable fish, and huge deficiencies in the winter. It is, therefore, important to be able to hold these fish for a protracted period.
1224 We finally developed the quick-freezing process and began its commercial use in 1924, and developed the essentials of our present process by 1926. Since then our annual gross sales in fish have increased about four times; and for the 16 months ending April 31, 1930, were over 16,000,000, of which $1,500,000 to $2,000,000 repre-
[fol. 975] sented the quick-frozen product—the balance all kinds of fish products put out by our 13 subsidiary companies. Last year we handled between 175,000,000 and 200,000,000 pounds of fish, of which about 35,000,000 pounds

were quick-frozen. The latter are shipped in car-
1225 load lots, principally in mechanically refrigerated
car, 50 of which we lease. This product represents
1226 the edible portion of the whole fish, skinned, pre-
pared, frozen, packed by automatic machinery and enclosed in wrapping cases in separate packages wrapped with parchment or celophane, and is sold in the same packages at the retail outlets.

This has had a very profound effect on marketing.
1226 Under the old method the inedible portion, amount-
ing to 60% to 65% in the case of haddock, for instance, was shipped along with the edible portion, and due to its perishability had to go by express at high rates.
1227 Due to its disagreeable nature and odor, it could
not be distributed through grocery stores, but had to be handled in separate stores, and as it was sold mainly on but one day of the week, and not in much demand in the summer, all of this store overhead had to be borne by the fish alone. This, combined with the high express, heavy shipping weight, and the perishable loss in the stores themselves, placed a heavy burden on the fish industry. The new process enables the elimination of the 35% to 40% inedible part, reduction of shipping weight, the use of carlot refrigerator freight shipments, instead of express, at correspondingly lower costs, and its more even distribution throughout the year through cold storage warehouses and
regular grocery and general food stores in original
1228 packages throughout the country, with practically no
loss. The product can be kept up to a year after freezing, but it is desirable to liquidate on inventory within six months, if possible. The product when sold is, for all [fol. 976] practical purposes, as fresh as the day it was caught, and the flavor is retained.

Most of our competitors are engaged in this quick-freezing in some degree, but we are perhaps the largest concern doing it.

1229 There are 8 or 10 concerns engaged in the inter-
state fish business that are comparable in size with ours. It has been applied heretofore principally to haddock, but we are beginning its use in other varieties, including cod, salmon, halibut, and sole; to some extent on scallops, but not for other shell fish.

We distribute over the entire continent north of the Mexican border, as far as California, and all through the Middle West, using as distributing agents fish wholesalers who have been in the business for years, and other provision distributors—in some instances, meat packers, such as Kingan & Company; where we make our arrangements not with the headquarters houses, but with each local distributor. Prior to 1922 this country-wide distribution
1231 of fresh fish, now possible with the quick-frozen process, was not in commercial use, that we know of.
1232 In my opinion, it seems very unlikely that monopolization of the food industry is either practicable or possible.
1233 While we do not disclose the details of our quick-freezing process, it includes the use of flat aluminum tables carried on a chain conveyor with ribbed bottoms, which dip into a calcium chloride brine as they travel along, refrigerated to about 25 degrees below zero. The goods lie on these tables, and are frozen in 28 to 40 minutes to a temperature of zero to 10 degrees below zero.
1236 We freeze from one side only, and do not use the double-plate system, and our process is not embraced in the Birdseye patent.

In the retailing store our products are kept sometimes in electrical refrigerators, which are not widely used as yet; more generally in ordinary refrigerators, where they slowly defrost. The refrigerator display case we have not gone [fol. 977] into, except experimentally. The products should be kept at 18 degrees to 20 degrees in a retail store, whereas the ordinary ice-box runs from 45 degrees to 55 degrees. This could be reduced with the use of salt, but it is
1235 hardly practical. In refrigerator cars we aim to maintain 15 degrees or lower, which is much colder than ordinary refrigerator car temperatures. The latter with ice and salt can be kept at 25 degrees, but it is very uncertain and may rise to 35 or 40 degrees on the trip. A mechanical refrigerated car is much better. The technique of quick-freezing of fish has progresed farther than it has as to meats, because of the red blood pigments in the latter, and the difficulty of maintaining the color. This is a chemical question, and does not, in my opinion, affect the
1236 speed or temperature required for freezing.

1237 Our distribution by motor truck is not extensive, and is done principally from distributing centers to suburban stores, purely an urban affair.

1238 Up until our use of this quick-freezing process, the great bulk of our fish was sold at New York City and along the eastern seacoast, the Great Lakes, and the Pacific coast—not to any great extent through the expanse of the continent. Even the old sharp freezing process, while it keeps the fish reasonably good for several months, never leaves it in quality approaching the quick-frozen and 1239 packaged goods. The greater part of our distribu- 1240 tion of quick-frozen and packated products is now in the Middle West, beyond the range of fresh fish, and the process has enabled us to compete in those territories where formerly we did not attempt to compete at all. In St. Louis and Kansas City, for instance, the principal demand was for catfish, taken from the Mississippi and its 1241 tributaries. Since we entered the field, the frozen packaged fillet of haddock has to a large extent displaced the catfish and halibut, though not entirely. Except for territories say within 48 hours of our sources of supply, it is superior to the fresh product available in the com- [fol. 978] munities we serve. As a matter of fact, we are distributing in territories in direct competition with fresh fish, as in Syracuse, New York, to which it is only 1242 an overnight trip from New York to Boston; also at Rochester, which is contiguous to the lake, and at Chicago, Cleveland, Detroit, and Buffalo. In all of these, we successfully compete on an equality with the product caught locally; also in Seattle, with the Pacific coast fish.

We ship entirely in through car shipments, except for a single break sometimes, as at Columbia, South Carolina, en- route to Atlanta. Points that we cannot serve in this 1243 way we take care of through territorial distributors who handle it either by overnight express or by truck.

The company tried a chain of retail fish stores in New York about 10 years ago, prior to my connection with it; but they were not successful. We are working toward electrical refrigeration in the stores, through distributors with cold-storage warehouses specializing in frozen merchandise, which includes fish, berries, meats, or whatever else can be so handled; using refrigerator trucks for distribution,

and retail stores with electric refrigerators, so that the overhead can be spread through all of these various
1245 products handled. This is not practicable, so long as there is only fish or a few other products that can be so distributed. It does not afford enough volume. A general line of quick-frozen products could obviously be handled more cheaply in a combination store than in separately specialized meat, fish, and grocery stores, and the equivalent cost of the former must be substantially lower per pound handled.

1246 It would thus become difficult for the specialized store to compete with the combination store. Even today the retail fish store is suffering from competition of grocery stores selling fish. The ideal distribution system [fol. 979] would embrace proper apparatus for freezing at the point of production, proper refrigerator cars for railroad transportation, proper trucking apparatus for transportation from the railroad to local distribution points, and proper refrigerator apparatus for preserving and handling in the stores, until sold to the consumer.

1247 We find quite satisfactory the service given the refrigerator cars that we use by the car owners—also the local trucking and cold storage warehousing
1248 at points of distribution. It requires both proper equipment and proper attention, but we do not have to bother about that, as there are public cold storage warehouses in every important city, catering to the general food trade, absolutely independent of us. In most cases, they are satisfactory; if not, we give our business to someone else.

Retail refrigerator equipment is still in an experimental stage. We put it in 80 stores in one mid-western city. Its manufacturers did the servicing; we supplied the product, and the local distributor managed the sales campaign. Technically it was a success, though a failure commercially, because of lack of volume. We do not consider it in any way necessary, in order to get satisfactory results in the distribution of our quick-frozen products, to be able to own and control each one of these distribution units.

1252 On the other hand, I think it would be very foolish, commercially. Of course, the question of having a widely distributed line that could use economically all the facilities of a cold storage warehouse, would have to be

considered. With our present volume, we would not consider it.

A general line of quick-frozen foods could all be
1251 shipped in common refrigerator cars or other containers, without one injuring the other. Whether this will be cheaper is a question that will probably
1253 never arise in an important way, because of the different points of origin—for example, frozen fish alone could be shipped from Groton, Connecticut, and not [fol. 980] meats or fruits; although it might be possible to work out a scheme for concentration of these various products in large distributing centers, and their shipment from there in mixed cars.

1254-5 With reference to Petitioners' Exhibits 76 and
2428 77, relating to refrigerator car equipment, it was stipulated that the supply of refrigerator cars in the United States, whether owned by the defendants or other meat packers, private car companies, or common carriers, is adequate to afford an ample supply of refrigerator cars at any time to any who need them and are in a position to use them.

[fol. 981] (51) VICTOR H. PELZ, Director of Editorial and Research Staff, American Institute of Food Distribution, New York, testified:

1257-8 I graduated from Northwestern University in 1916, with a master's degree in 1917; instructed in the School of Business, University of Nebraska, 1919 to 1921; then with the University of Wisconsin one year; then three years as professor of marketing, Tulane University, New Orleans; then, 1925 to 1927, on the graduate faculty at Stanford University, then six months as Assistant to the President, H. O. Wilbur & Sons, a chocolate manufacturing concern in Philadelphia.

The Food Institute is a non-profit organization to furnish information and research in problems of food distribution for its membership, which includes between
1277 800 and 900 business firms in all branches of the

1258 food industry, such as wholesale grocers, chain stores, manufacturers, meat packers, brokers, fruit and vegetable canners, etc.

Since 1928 we have conducted studies of the volun-
1259 tary chain system of merchandising. A voluntary chain is a group of independently owned retailers who cooperate in joint buying, joint advertising, or in joint or group control of their retail stores in retail store management. There are three general classes:

The most important group is that which is sponsored by wholesale grocers. A wholesale grocer will gather together a group of retailers with whom he has an understanding to the effect that the retailer will concentrate their purchases to a large degree from the former and it in return will furnish them with certain assistance in merchandising and managing to enable them to run their stores more effectively.

[fol. 982] The second group, known as the "retailer-owned wholesaler," involves generally a regular wholesale grocery business, the stock of which is owned entirely or largely among a group of retail grocers.

The third type is a more informal association of independent retailers for the purpose of group buying or advertising, but without ownership or wholesale grocery facilities. The latter is very informal; is likely to spring up and go out of existence quickly, or be absorbed into one of the other types. It has developed in recent times, but not as rapidly as the wholesaler-sponsored type.

So far as the members of these groups tend to pool their purchases, it gives them the advantages of quantity buying, and enables the wholesaler to reduce his costs accordingly, both overhead, operating, and selling.

1263-4 It gives the members an advertising service that they cannot afford to provide themselves with individually, and tends to eliminate the jobbers' profit, either through their distribution to the stock-holding retailer or through enabling lower wholesaler costs and prices; and, through the reduction of retail inventories, enables the saving of interest on investment to the retailer. The purpose of the voluntary chain is to enable the independent retailer to give the consumer the same merchandising service and prices comparable to those of the corporate chains.

The wholesaler-sponsored type is adopting the
1266-7 use of private brands in their merchandising.

Excerpts from Petitioners' Exhibit 78

Petitioners' Exhibit 78 incorporates in part the results of the Institute's studies on chain stores. The table on page 16 shows the number of voluntary chain organizations in each of the three groups, with the number of member [fol. 983] stores included, as follows:

	Organizations		Retail members	
	Number	Per cent	Number	Per cent
Cooperative groups	175	31.7	7,253	12.2
Retailer-owned wholesalers	103	18.7	18,076	30.3
Wholesaler-sponsored groups	273	49.6	34,311	57.5
Totals	551	100.0	59,640	100.0

Table 2 on page 11 shows the growth since 1920, both in memberships and number of groups, of the 201 groups there reported, and shows that out of that many groups, with 29,756 member stores, only 14, with 6,597 member stores, were started before 1920. The table, with explanatory notes, is as follows:

Year of Organization and Present Retail Membership of 201 Voluntary Chains

Year	Organizations started				Now have present retail membership			
	Total	Cooperative groups	Retailer-owned wholesalers	Wholesaler-sponsored groups	Total	Cooperative groups	Retailer-owned wholesalers	Wholesaler-sponsored groups
Before 1920	14	..	14	..	6,597	..	6,597	.....
In 1920	4	3	1	..	480	105	375	.....
In 1921	2	..	2	..	107	..	107	.....
In 1922	5	..	4	1	407	..	315	92
In 1923	3	1	1	1	571	23	98	450
In 1924	4	1	2	1	667	68	509	90
In 1925	15	3	5	7	2,244	35	339	1,860
In 1926	17	7	6	4	2,745	844	982	919
In 1927	29	6	8	15	2,296	160	425	1,711
In 1928	44	12	5	27	6,281	467	214	5,600
In 1929	52	9	2	41	6,562	382	114	6,066
In 1930	12	4	1	7	799	234	100	465
Totals	201	46	51	104	29,756	2,318	10,175	17,253

Notes Regarding Tables 2, 3, 4, 5 and 6

1. Each voluntary chain was asked to state its present retail membership, the date it was organized, and the number of members it had at the close of each year since organization.

Table 2 summarizes the replies of 201 organizations which gave the present retail membership and the date of organization. These 201 organizations have a total retail membership of 29,756. This Table, therefore, covers 36.5 per cent of the total number of voluntary chain organizations and 49.6 per cent of the total retail members of all voluntary chains now operating in the United States.

[fol. 984] Table 16, on page 43, shows the extent to which retailers in these voluntary chain organizations are handling food lines other than groceries, and shows that out of 28,621 stores, embraced in 203 chains, 13,377 stores, or 46.7% of the total, were handling fresh meats. This table, with explanatory notes, is as follows:

Extent to Which Retailers in Voluntary Chains are Handling Food Lines Other Than Groceries
(Based only on reports from those organizations which answered this question)

	Organizations	Total retail members	Number and per cent of total, handling					
			Fresh meats		Fresh fruits and vegetables		Bakery goods	
	Number	Number	Number	Per cent	Number	Per cent	Number	Per cent
Wholesaler-sponsored Groups	105	17,333	8,792	50.7	15,594	90.0	11,172	64.5
Retailer-owned Wholesalers	51	8,950	3,067	34.2	6,304	70.4	4,171	46.6
Cooperative Groups	47	2,338	1,518	64.9	2,290	97.9	1,498	64.1
Totals	203	28,621	13,377	46.7	24,188	84.5	16,841	58.8

Notes Regarding Table 16

1. This Table summarizes the replies to the question: "How many, or what proportion of, member stores now handle: Fresh meat? Fresh fruits and vegetables? Bakery goods (other than bread and cookies)?"

2. Replies to this question were received from 203 organizations with a total retail membership of 28,621, representing 37% of organizations and 48% of total members of all voluntary chains in the United States.

3. The figures concerning the number of stores handling bakery goods other than bread, crackers, and cookies are subject to some doubt as to accuracy. The question asked specifically concerning bakery goods other than bread and cookies but other information given in some questionnaires indicates that in many cases the answer referred to stores which handle bread and cookies only.

[fol. 985] Table 13, page 37, summarizes replies to our inquiries as to the extent to which voluntary chain organizations have enabled retailers to make savings in operations or secure concessions from manufacturers. This table with explanatory notes, is as follows:

Financial Gains by Voluntary Chains Through Decreased Operating Costs and Concessions Secured from Manufacturers

Form of gain specified:	Number of times mentioned by (95) Wholesaler-sponsored groups	(44) Retailer-owned wholesalers	(42) Cooperative groups
Lower Expenses (without detail)	11	..	..
Specific savings mentioned:			
2% on operation	5	1	..
2-5% on operation	3	..	..
8% saving	1	..	1
10-12% saving	..	5	1
Average net saving of 14%	..	1	..
Expenses reduced one-third	1	..	..
Elimination of salesmen	4	..	..
Regular deliveries	2	..	..
Faster turnover	1	..	..
Smaller receivables	2	..	..
Gross margin specified:			
2%	1	..	..
3%	..	5	..
5%	..	1	..
5-10%	2	..	..
Increased volume:	7	..	..
Specific forms mentioned:			
Through concentration	4	..	..
Better than 20%	1	..	..
Advertising allowances	19	14	4
Price concessions	19	5	11
Concessions equal 5-10%	1	2	..
Quantity purchases	7	2	3
Manufacturers' willingness to cooperate	5	..	3
Saving jobbers' profit	..	4	..
Same as chains	2	..	1
Increase in net profit	3	..	..
General answers:			
No gains	1	3	..
Becoming difficult to get concessions	1	..	1
Not much	6	1	2
Some	2	2	2
Considerable	20	2	6
No savings in operation cost	3	..	..

Notes Regarding Table 13

1. Table 13 summarizes replies made to the question: "To what extent has your voluntary chain organization and the concentration of purchases by retailers enabled you to make savings in operation, or to secure concessions from manufacturers?"

2. Systematic tabulation of the replies to this question was difficult because of the extreme range of answers given. So far as possible the savings specified in the Table are in the exact words used, and wherever any doubt existed as to the precise meaning, the answer has either been set up in a separate classification or included in the general answers.

[fol. 986] Table 15, page 39, summarizes the information received as to the extent to which stores in the three types of voluntary chains are using private brands or labels in their merchandising, which table, with explanatory note, is as follows:

Extent of Private Label Business by Voluntary Chains

	Wholesaler-sponsored groups	Retailer-owned wholesalers	Cooperative groups
Feature them	13	1	..
Quite materially	22	3	..
Using more all the time	3	1	..
Some	4	1	..
75%	3	..	..
50%	2	..	..
30-35%	2	2	..
20-25%	7	..	..
1/6 of items or sales	3	..	..
Under 5%	..	4	..
Canned and bottled goods largely	2	6	..
Only for non-member stores	4	..	..
Dealers like their brand	6	..	..
Feature non-conflicting	1	..	..
Feature Richelieu	..	..	1
Very few items only	2	5	9
Very little	13	7	2
Indefinite	3	..	..
Miscellaneous answers	2	..	..
None	8	17	29
No answer	5	6	6
Total replies	105	53	47

Note Regarding Table 15

This table summarizes replies to the question: To what extent do your own labels enter into your merchandising plans?

The Independent Grocers' Alliance is the largest of the voluntary chains and is of the wholesaler-sponsored type, with, roughly, 5,000 or more retail members.

Tables 18, page 47, summarizes the information we received as to the extent to which stores in these three voluntary groups tend to cooperate in purchases in the three general food classifications, "fresh meats," "fresh fruits and vegetables," and "bakery goods."

[fol. 987] This table, with explanatory notes, is as follows:

Arrangements Made by Voluntary Chains for Concentrating Purchases of Food Lines Other Than Groceries

Type of arrangement made	Wholesaler-sponsored groups			Retailer-owned wholesalers			Cooperative groups			
	Fresh meats	Fresh F's & V's	Bak'y gds.	Fresh meats	Fresh F's & V's	Bak'y gds.	Groceries	Fresh meats	Fresh F's & V's	Bak'y gds.
None (or no answer)	82	38	43	46	32	42	13	37	30	32
Tie-up now being planned	3	6	3	1	1	1	1	1	..	..
Occasional	1	2	1	..	1	..	..	..	2	..
Tied up largely with one source	7	30	12	1	4	1	7	1	1	1
Purchases made largely from 2 or 3 sources	..	1	4	1	1	1	4	..	1	1
Have cooperative arrangements of some character, often on specials only	11	17	34	3	7	7	16	7	12	13
Purchases handled by bids	1	2	..	1	1	..	1	1	1	..
Have our own department, plant or buyer	..	7	2	..	5	..	..	..	..	..
Will have to open our own department	..	2	..	..	1	..	..	..	..	..
Tie-up on bread only	..	..	5	..	..	..	..	..	..	..
Tie-up on crackers only	..	..	1	..	..	1	..	..	..	..
Total number replying	105	105	105	53	53	53	47	47	47	47

Notes Regarding Table 18

1. This Table summarizes the replies made to the question: "What arrangements has your group made to concentrate purchases in consideration of special merchandise concessions with regard to fresh meats, fresh fruits and vegetables and bakery goods?" In the case of cooperative groups this question also included groceries.

2. In the case of bakery goods the question as stated did not distinguish between the staple bakery items, such as bread, crackers and cookies, and the specialty lines like pies, cakes, rolls, Danish pastry, etc. The majority of the replies, therefore, refer primarily to arrangements made with bakers of bread, crackers and cookies, and in some cases the answers indicated specifically that this was the case.

3. The questions asked concerning meats were intentionally worded so as to elicit information regarding fresh meats only. Little specific information was supplied regarding arrangements for procuring cured and smoked meats. What date is available, however, indicates that special arrangements with packing houses are more common with respect to cured than fresh meats, for nearly every grocery store carries some cured meat items.

This table shows, for instance, that out of 105 reporting in the wholesaler-sponsored group, 82 show no concentrated meat buying, and seven indicate that in the purchase of this commodity, they are "tied up largely with one source." This latter description indicates the highest degree of concentrated buying of any of the categories there listed. That arrangement means that the voluntary chain headquarters tries to persuade or compel its retail members to live up to the agreement. The extent to which they do so is shown indirectly by the table on page 49, which with explanatory notes, is as follows:—

[fol. 988] Extent to Which Retailers Concentrate Purchases of Allied Food Lines from Cooperating Supply Houses

Degree of concentration	Number of organizations reporting specified degree of concentration	
	Wholesaler-sponsored groups	Retailer-owned wholesalers
Less than 25%	..	..
25-49%	1	..
50-74%	13	1
75% or over	20	14
Not very well	2	1
Quite well	15	..
Very well	12	..
Answers indefinite	7	3
No tie-ups reported	35	34
Total replies	105	53

Notes Regarding Table 19

1. This Table summarizes replies to the question: "To what extent do your members really cooperate by making purchases of allied food lines through supply houses with which you have made special arrangements?"

2. In the case of cooperative retail groups, one question was asked to cover both grocery and other food lines, the replies being summarized in Table 12.

This table shows, for instance, that out of 105 groups reporting, 20 reported that out of total goods handled by their member retailers, 75% or more were purchased from supply sources with which the retailer had some kind of an exclusive purchasing arrangement. This table deals only with the first two groups of voluntary chains; the third, or strictly cooperative group is dealt with in the same way in table 12, page 35, which table, with explanatory notes, is as follows:—

Extent to Which Retailers in Cooperative Groups Concentrate Purchases from Affiliated Supply Houses

Degree of concentration	Number of cooperative groups reporting specified degree of concentration
Less than 25%	..
25-49%	..
50-74%	4
75% or over	8
Not very well	1
Quite well	10
Very well	6
Answers indefinite	3
No tie-ups reported	15
Total replies	47

Notes Regarding Table 12

1. The report form sent to cooperative retail groups asked the question: To what extent do your members really cooperate by making purchases through supply houses with which the group has made special arrangements?

2. Replies cover groceries only unless a group has made tie-ups on allied lines, in which case answer supposedly applies to all. Majority of replies were expressed in percentages; all others were classified according to degree of concentration indicated.

[fol. 989] In these last two tables, it is probable that those who replied "very well" intended to indicate a concentration of over 50%; and in that case the total number cooperating to the extent of 50% or more can be obtained by adding the number listed in the categories, "50% to 74%," 75% or over," and "very well."

1279 These tables are based on the replies to questionnaires sent to all voluntary chains of which we had record, total of 551, and these various tables that I have referred to, summarize the replies of those who did reply to the specific questions on the questionnaire; for instance, out of the total replies received, only 105 out of the wholesaler-sponsored group, and 53 out of the retailer-owned group replied to the particular question dealt with in Table 18.

1280-89 The replies are fairly typical, both as to size of chains, type of organization, methods of operations, and geographical distribution.

[fol. 990] In some cases the quantities bought collectively by a given voluntary chain are so large as to consti-

1290 tute a considerable part of the seller's total output. It may range from 5 to 75%. For instance, there are many small canners with relatively small output who may sell the bulk of it to one, two, or three distributing organizations, chains, or regular chains.

Voluntary chain advertising includes both educational and competitive arvertising. In the latter case the
1291 chain usually represents members not territorially in competition with each other, though they may be
1262 in competition with other stores enjoying similar service from another chain, such as the District Grocery Stores and the United Food Stores in Washington, D. C. This may result in increasing the intensity of competition, with a consequent decrease in the number of marginal retailers, crowded out by the greater efficiency of the remaining organizations.

There are about 900 regular chain grocery store organizations having in the neighborhood of 60,000 to
1300 65,000 stores in the United States. That is an
1300-01 approximation. The 551 voluntary chain organizations are in competition with each other and likewise with the 900 integral chains who are also in competition with each other in the same way.

The various voluntary chains operate independently of each other, except in the case of federated groups
1318-9 such as Independent Grocers' Alliance, Red & White, Clover Farm, Nationwide, etc. Each of these groups operates independently of each other just as much as A. & P. and Kroger, and independently of trade associations in the grocery field. Indeed, many of the retailer-owned wholesalers have grown out of or been a by-product of a trade association community of interest. In some cases the retailer members are members of local retail grocers' associations.

There has been a marked change in marketing practices in the past ten years. There has been a very de-
1293 cided decline in the practice of future buying by re-
[fol. 991] tailers, with the resulting tendency to buy from week to week on short orders for immediate use, cutting down the stocks carried by the stores and compelling the wholesaler to carry the inventory cost. This is commonly known as "hand to mouth" buying, and has increased the importance of quick delivery and good transportation facilities, and has naturally given a greater competitive advantage to the seller in a position to furnish quick and prompt deliveries.

1302 My observations have enabled me to observe the outstanding trends in the changes being made in

merchandising methods during the past ten years. First, there has come the remarkable change in concentration of control of retail outlets as typified by the regular chain during the last 10 years and as typified by the voluntary chain during the past 3 or 4 or 5 years. There are generally assumed to be about 300,000 independent retail grocers in the country today. I do not know how many there were in 1920. Presumably, the number was approximately the same aside from the increase brought by decentralization of population in smaller communities and by growth in population. But among the 300,000 retail outlets today, we have this present phenomenon of about 60,000 tied up in voluntary chains. No accurate figures are avail-
1303 able whatsoever of which we have any knowledge as to the volume of business which is controlled by the voluntary chains. Our estimate is, and it is purely an estimate, that about 25% of the retail grocery business of the country is now in the hands of the constituent members of the voluntary chains. This cannot be stated in dollars because there is no agreement to the best of my knowledge at all, as to what the total retail volume of business of the country amounts to. Of course that puts a shaky foundation on any 25% estimate. I realize that. But it is a figure arrived at deductively figuring from the top down instead of from the bottom up. Students in the grocery field seem to agree that there is about 35 per cent of the retail grocery business in the hands of the 800 or 900 centrally owned chains. So that today we have approxi-[fol.992] mately 60 per cent of the total grocery business concentrated in the hands of 1500 or less organizations.

1304 Concentration of control of the retail outlets in this limited number of organizations is one change. The merger, consolidation movement among food manufacturers is a matter of fairly common knowledge, although no completely significant statistics concerning that
1305 consolidation movement to my knowledge are available. In some respects that movement has been going on underneath the surface in a manner that so far has not come out to public knowledge. For example, there is the definite movement on foot among the corn canners of the United States to bring about a central selling organization split up by districts. The business depression

put a quietus on that movement probably for some time to come. But last year it was prominently discussed among corn canners. That tendency toward consolidation among food organizations has been greatly accentuated by the activities of the Federal Farm Board and probably we have only seen the beginning of that movement in the sale of products which are of direct interest to consumers. After all, we do not eat wheat, and we do not eat cotton and we do not eat live stock. Those have been the chief fields of activity of the Farm Board so far, but recent activities of the Farm Board, if a lay opinion can be asserted here, indicate that there may be the continuation of that growth of consolidated selling organizations fostered by the Farm Board in connection with products that are directly consumed in the form in which they leave the producing centers.

1306 The grape control plan in California, is one definite illustration of the effect of the Farm Board in trying to centralize the marketing of a product which is eaten the way it is grown with some modifications.

A further significant development is the growth of this all around combination food store, because it has from a business standpoint the advantage of giving a larger volume to bear the given overhead necessary to carry on efficient retailing operations. It is convenient for the consumer. What little we know about the buying habits of the American housewife indicates that they want to do [fol. 993] their buyng with as little inconvenience as possinble. They would rather shop under one roof than five if they can, which is the consumer's reason for the increasing patronage of these all-round combination general food stores.

If and when the technical problems of quick-freezing are solved, there will then be five major developments, because as Mr. Taylor indicated this morning, the development of departments in retail stores or separate stores which specialize in the distribution of the frozen products is a development which, if one may prophesy, is about to come. This, in turn, will bring about an acceleration of this movement for general food stores.

1307 Those five features (1) the consolidation of retail outlets; (2) the concentration of control of selling of manufactured food products; (3) the concentrated con-

trol of the selling of agricultural food stuffs that enter into consumption in their original form; (4) the development of the modern food store handling a complete food line; and (5) the possibility of the extensive growth of the quick-freezing of foods, are, in my opinion, the things that have come about in the last ten years which are of significance in food distribution.

1312 There is little doubt but that the competition for the patronage of the consumer in Washington is keener now with practically all of the retail business in the hands of half a dozen chain groups than it was ten or fifteen years ago when each local corner grocer was competing only with the limited resources or the equally limited resources of other corner grocers across the street and each local market area was a distinctly separate
1313 trading area. If this trend continues in the lines which I have described it will involve the substitution of competition between integrated groups rather than a competition between disjointed legally independent business units each in a given level.

1323 The best data made public on total food expenditure in the United States ranges from $16,000,000,000 to $27,000,000,000. Ditman's estimate is $24,000,000,000, including $3,000,000,000 for food produced and con-
[fol. 994] sumed at home, such as what the farmer raises for his own family use. Ditman is editor of the Progressive Grocer, and his estimate agrees with that of Professor Nystrom, of Columbia, although the two arrived at it in totally different ways.

1327 (52) BRUCE MCCULLOCH, of Omaha, Nebraska, Editor of the Daily Journal Stockman, testified:

The Daily Journal Stockman is a farmer paper interested particularly in the live stock market and has a daily circulation of from 125,000 to 150,000.

1328 We have a corps of men who obtain market news on the general trend of the market and another corps of men who get the actual transactions from the
1329 market as they occur. I am out on the market every day part of the time and very frequently do the market reporting myself.

1330 I have always thought there was plenty of competition on the Omaha market. There are the large packers and a dozen small packers located at Omaha, and a number of order buyers buying for packers all over the country. There are a great many traders and a still greater number of country buyers who are there buying stockers and feeders every day in the year. There is plenty of
1331 competition, I would say and it is keen and active.

A few years ago all the stock, or the great majority of it, was brought to market by train but at the present time probably half of the hogs and one quarter of the cattle sold on the Omaha market come in by auto trucks. This method of delivery enables the farmer to take advantage of the market news that comes to him by radio during the day. He can load his truck very quickly after he has received the market information or he can withhold his stuff. The truck will get him to market within a few hours after he has the information, for instance, of a rising market. Without having the figures here I would say that about 1,300,000 hogs a year are brought to the Omaha market by truck and about one-quarter of the cattle are [fol. 995] trucked in now. In my section of the country there has been a marked increase in hard-surfaced
1332 roads; and that, with the improvement in trucks, has brought about the increased trucking.

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(53) Arthur H. Judge, Editor of "Canning Trade," Baltimore, Maryland, testified:

"Canning Trade" is a periodical founded in 1878, dealing with information of interest to commercial canners, principally in the fruit and vegetable line. I have been with it since 1895.

1334 In the last five years sales of canned goods for future delivery have gradually dwindled down and been replaced by spot selling to jobbers, chain stores, etc. Eighty percent of the smaller canners have no sales organizations of their own, but depend almost entirely on brokers who sell on a commission of 3 to 5%.

1335 Sales direct to chain stores have increased in the past few years with a beneficial effect on canners in that it takes up the distress lots or spot surpluses—at

low prices, it is true, but still it moves them off the market.

1337-38 It is more expensive to handle small orders than large ones, and therefore less expensive to handle large chain store orders than small individual store orders.

1336 The method of selling to wholesalers has changed in the last few years to this so-called "hand to mouth" buying, which increases the small canner's handling charge. An increase in the number of outlets available [fol. 996] to him would benefit him, that is, on the assumption that the more buyers the better the price. I

1338 think the elimination of the packers from the canned goods market has slowed down the movement of canners' products.

1341 (54) F. H. SIDNEY, Economist, Commercial Research Department, Swift & Company, Chicago, testified:

I have compiled from records of Swift & Company lists of competitiors in the various territories and lines of business in which it operates. These compilations cover a period of more than six months, beginning early last spring, and are contained in the following Petitioners' Exhibits:

No. 79—"Meat competitors doing business in Swift branch-house territories."

No. 80—"Meat competitors doing business in Swift car route territories."

No. 81—"Produce competitors doing business in Swift branch-house territories."

No. 82—"Produce competitors doing business in Swift car route territories."

No. 83—"Wholesale grocers doing business in Swift branch-house territories."

No. 84—"Wholesale grocers doing business in Swift car route territories."

1342 By "branch-house territory" I mean the trade area contiguous to a branch selling house of Swift & Company, in which area that branch does business.

1347 By "car route territory" is meant a group of towns located along certain lines of railway which

are served by a Swift packing plant or branch house by refrigerator peddler car shipments.

[fol. 997] This information was gathered through our branch houses and car route sales managers through
1344 their individual salesmen, and was carefully checked.

1346 Exhibits 79 and 80 classify meat competitors as "local" and "outside," which refer, respectively, to those having establishments located within and without the particular branch-house or car route area referred to and who sell within that area in competition with us. As produce competitors, we include those handling butter, eggs, poultry, and cheese, or any one or more of
1354 these items.

1347 Petitioners' Exhibits 85 and 86 are summaries of the information contained in these previous exhibits as to branch-house and car route territories, respectively.

1353 The concerns listed in these exhibits, 79 to 86, are concerns actually making sales in the respective localities referred to; but there is no attempt to show volume of sales made in any particular instance.

1348 Petitioners' Exhibits 87 and 88 are, respectively, a map and the index thereto listing and showing the location of wholesale grocery houses in the United States, compiled from the Thomas "Wholesale Grocery and Kindred Trades Register," which is the standard reference work customarily used for ascertaining the location of such concerns.

1349 The figures in circles on the map are key numbers referring back to the index which, under the respective state, identifies by that number the town indicated on the map and the number of wholesale houses there located.

1350 Petitioners' Exhibit 89 is a list of meat-packing concerns who handle any of the so-called unrelated articles listed in the fourth paragraph of the Consent Decree of 1920 in this case. It was gathered through our [fol. 998] branch-house and car route managers and salesmen, and indicates actual offerings made by these concerns in these lines in our respective territories.

1352 It does not show which of the concerns therein listed are slaughtering meatpackers and which are

merely processors, though that could be ascertained by reference to these previous exhibits.

1353 Petitioner's Exhibit 90 is a list of chain stores, similarly compiled, which perform meatpacking operations as therein indicated.

1355 (55) ARTHUR A. MILLETT, Assistant Manager, Branchhouse Department, Swift & Company, Chicago, testified:

I have been with Swift & Company 34 years and in the Branch-house Department since 1908, and Assistant Manager since 1928. Branch houses are units located all over the country, used for selling and distributing our
1357 products to our customers. Each is equipped with refrigerated "coolers," and most of them have freezers which carry lower temperatures. Many do processing, such as smoking, sausage manufacture; also candling and grading eggs, and some cut butter. They are split up into 26 different districts, each with a district manager. Each is located in a city which we consider a good central delivery or shipping point, and is dif-
1359 ferent from the plant, of which we have 40 or 41, which is the manufacturing unit where we do slaughtering, dressing, and preparing the meat for market.

1359-60 We have a full organization at each branch house, a manager and in case of a large house we may have an assistant manager. We have a complete sales organization necessary to cover the customers, shipping clerks and the necessary help to do the work in the house, delivery system, trucks and the necessary chauffers and help of that kind.

We have 415 capitalized branch houses and 25 or 26 sub-branches, 440 altogether. Car-lot shipments are made to branch houses from plants, in Swift refrigerator cars, on order of the branch-house manager, and are unloaded into the coolers to await sale. The selling price list is made up [fol. 999] by the branch-house manager for the salesmen's guidance. There is great variation in prices. We know the operating cost of each branch house per 100 pounds, and

would like to be able to add that on the billing price, plus a margin of profit, but many times do not do that.

1361 It is strictly a matter of bargain and sale, and we
1398 determine our selling price according to how our stuff moves. The branch manager is left to vary prices to
1399 meet existing conditions on the market to move his stuff.

1360 A very large percentage of the products sold by our branch houses are perishable.

1361 We sell to retail merchants, grocers, chain stores, if there are any in the town; and to some extent to wholesalers, but not a great deal—mostly concerns who cater to the hotel and restaurant trade.

1361 We have wholesale meat dealers who buy from us and sell in competition with us.

We make sales to chain stores both from plants and branch houses, though there is a great tendency for chains to buy direct in carload lots from us in Chicago or
1362 other points where they can get better and larger
1364 shipments. This takes that business away from our branch houses and has tended to render those facilities unusable, impelling us in the last few years to try to put in some small sub branch houses and work the trade more closely, with an effort to take on the smaller trade, so-called "holes in the wall", operated often, for instance, by a man with a pretty good sized family who opens up a store in his front parlor and buys enough to serve his family and some extra.

1368 Experience has shown that the cost of getting this trade more than offsets the profit upon it, and it has not helped out our branch-house difficulties. It has also been attended by a decrease in the size of individual orders from 119 pounds per order a year or so ago to 105 pounds per order today. This, of course, increases handling costs [fol. 1000] and lowers profits.

Chain stores are able to buy at lower prices than
1369 the independent fellow, both because their buyers are better posted and because the size of business they control helps to keep our perishable products moving and to reduce our branch-house overhead, even if we do not make money on it.

1370 When I was district manager in the Cincinnati territory it was quite common for a chain store buyer to

come in and want to buy some product and upon naming him a price he would say he could buy that product in Chicago cheaper, that he had a wire from Chicago and that the market was a good deal lower there. The chain buyers tried to bring the markets down to a lower level and they are generally known as the lowest level market. If you have a glut in one market the chain store buyer can bring another market that is in a normal condition down to the glut basis by reason of his knowledge of both markets.

Often one of our branches which has been enjoying the business of a substantial chain store buyer for several weeks will place orders on Chicago to anticipate its future demands when it will suddenly leave and place its order elsewhere, leaving us to dispose of this perishable product at a sacrifice price, which also tends to lower the market generally, because the news of a low sale spreads over the market pretty fast and all buyers are keen to take
1371 advantage of it.

We market branded products in premium hams and bacon, Brookfield butter, eggs, and cheese; also oleomargarine, salad dressings, and other items.

1408 Swift and Armour lines are the most extensively advertised lines nationally, and extensively developed. In reading the magazines, I have concluded Swift and Armour are the only consistent national adver-
1409 tisers in hams and bacon and like that. Cudahy may; it may have escaped my attention, but possibly I notice ours pretty regularly. Ours is always there, I think in the Saturday Evening Post continuously.

1372 Chain stores often make leaders out of our brands, leaning to the ones that are nationally advertised, buying them from us at a fair price and then selling
1378 them below cost to attract trade to their stores. This causes an increased demand from retail dealers competing with them for lower prices from us.

1382 The use of leaders is a practice generally under-
[fol. 1001] stood among the retail trade, and their attractiveness in drawing trade to the store depends
1386 upon offering them at a reduced price for a short time, and tends to disappear as competing retailers make corresponding reductions in price. It does not necessarily mean that other dealers try to buy from us at a lower

price in order to meet the leader. It just upsets them
1378 and they refuse to buy from us. They probably take this business to some other packer; and, if the other packers' customers have become similarly dissatisfied, they might come to us. The annoyance is peculiar to us whom they make leaders out of our product. They do not do that all the time. It probably weighs against us more
1388 than the smaller packers because they do not use nationally advertised brands to the same extent as Swift and Armour.

Chain stores feature their own private brands and display them most prominently, while they put ours back somewhere less accessible to the trade. This is detrimental to us.

1374 Voluntary chains operate much like the regular chains, although we have felt their effects more on products like margarine and salad dressings.

1375 There is a growing tendency among chain organizations to do a good deal of their own processing which was formerly done by the packer. By processing I mean smoking their own hams, slicing their bacon, in many cases cutting their own butter, buying their eggs in bulk and candling them and grading them, putting them out under their own brands; things about like we do in our plant, or in many cases, in our branch houses that might be located in the same town in which they have a warehouse. We both would be doing practically the same processing.

1375 Swift branch houses have not been used for handling groceries or canned goods. We did this to quite an extent in 1916 and 1917 and could do so now without any increase in our sales organization and with practically no increase in our distributing expense or overhead.

1377 Our branch houses frequently find themselves glutted with products, requiring serious price cuts, which is not a problem to the retailer. The retailer does [fol. 1002] not buy as far ahead as he used to, but demands more frequent deliveries, sometimes twice a day just
1378 from hand to mouth so as to take advantage of a lower market if it develops.

1379 We sell in keen competition with Armour, Cudahy, Wilson, Hormel, Kingan, and a large number of other

packers in all our different markets.

1380 We never coerce a customer to buy one thing in order to get another that they need, and I do not think that is possible; nor do we refuse to sell customers who buy from certain other competitors or use any other discriminatory or unfair practices toward competitors.

1390 The chief function of a branch house is marketing. We only store there long enough to sell it. Storing, as such, is done at our plants. The big factor in branch-house capacity, therefore, is personnel to handle the trade, although we need sufficient storage space to handle
1391 the flow. As branch-house business decreases, its personnel can be decreased somewhat correspondingly, although as long as we operate a branch we have to have a certain personnel and certain equipment.

1392 Branch houses vary in construction. Originally they were mostly wooden; later of brick, with wooden floors and doors; and, of late years, all concrete throughout. They are usually out a little way from the
1393 business center of the city, perhaps a mile to a mile and a half, located where, in our judgment, we can best supply the trade, not necessarily in the market-
1394 ing section of the city, but on a railroad wherever possible. If not used by us, they would not be practicable for office space, but could possibly be used as warehouse space for other types of produce or wholesale lines. As we have had to discontinue particular branch houses for lack of business volume, sometimes we have been able to sell them, sometimes rent them, sometimes neither. We have had quite a number on the market recently.

1395 Where we sell to chains in carload lots, because that is the way the chain store buyer wants to buy, it is usually cheaper to deliver it direct from the plant than to handle it through a branch house. Although this leaves us with unused branch house capacity, it is a factor in de-[fol. 1003] termining which method of business is going to be most advantageous to us; and when we find business methods change, so that we do not need so much warehouse space, we always have the option to close it up and turn it over to other uses by lease, sale, or otherwise. Our surplus branch house capacity is due to a lessened volume going

through the branch house, not necessarily to a decrease in the total volume of Swift & Company; with that I am not familiar.

1401 The volume of business ordinarily handled in a branch house will range from 50,000 up to 500,000 pounds a week, and one might be profitable anywhere within those limits, depending on conditions. Some are started as sub-branches, and if, after six months or a year, it proves a good location, it may be cut away from the parent

1403 house and made an independent branch. Territory not within a practical distance of a branch house is served by car routes or other facilities, from the plant. There are many small packers that would do a business between 50,000 and 500,000 pounds a week. As a packer's business expands territorially, it is possible to open branch houses to take care of that expansion, i. e., to apportion branch house capacity to the size of the business. If it falls off, we would naturally close and dispose of some that we already operate. In proportion to the size of its business, I think the branch house cost of larger and smaller

1404 packers who use them would run comparatively close. Of course, we cannot reduce branch house equipment and personnel costs in direct proportion as business

1409 falls off, i. e., a 20% decrease in volume would not mean a 20% reduction in costs. We would have to keep at least a skeleton organization up until the time we close the branch.

We could only dispose of branch house space in

1410 case we could discontinue the whole branch. We could not run part of it as a practical matter. We attempt to sell out our branch house products during the week in which received. Good meat can be kept in the coolers from five to ten days, if necessary.

1416 (56) A. O. Nelson, District Manager, Swift & Company, Portland, Oregon, testified:

I am in charge of the Portland District, which includes ten branch houses in Oregon and Washington. I have held this position for 11 years and have been employed by Swift & Co. for 25 years. During the past ten years, there has [fol. 1004] been a considerable change in the character of

our customers, and our outlets have been more or less
1417 restricted on account of the growth of chain stores in our territory, of which there are 19 or 20 systems, chiefly the McMarr group, with 280 stores; Safeway with 140; and Piggly Wiggly, with 40—also in the voluntary chain class; Red and White with 325; Puget Sound Quality Stores with 300; Affiliated Buyers in Portland, with 175; and Purity, with 200; also Federated Stores and
1418 United Stores. None of the voluntary chains was in our territory ten years ago. They have grown up mostly in the last two years. The Red and White and Purity voluntary chains are sponsored by wholesale grocers. Chain buyers are well posted on markets and bear down the wholesale market structure of the country.

1419 The chains feature our branded products in a manner that is detrimental to our business. Not long ago one of the chains featured our Silver Leaf Lard in packages at the opening of a new store. This lard we sold to them at 12½¢ per pound and they put signs on their windows on the day of the opening at 10¢ per pound. The trade objected and caused us quite a little annoyance and trouble. We had a similar case in connection with premium hams at Easter time. In one instance they were advertised in the paper at 3¢ per pound less than the chains paid us for them. This resulted in considerable dissatisfaction among the retailers and independents and many of them returned hams which they bought for Easter as a result of that.

1420 Because of the restriction of our outlets by the development of chains, we have found it necessary to develop smaller customers, whose credit ratings probably were not as good and to whom we have to give extra service which results in increased sales delivery and accounting expense, etc. Many of these accounts have proved to be unprofitable because of the decreased size of individual orders. The average order has decreased in volume during the last few years but there is substantially no difference in the cost of selling and delivering a small as compared with the large order.

[fol. 1005] Our principal competitors in my territory are Armour, Cudahy, Sinclair Provision, a subsidiary of Wilson, and Cudahy Bros. of Milwaukee, also Rath, Morrell, Hormel, and the large packers located on the coast such as

Frey & Co., Karsten Packing Co., James Henry, Seattle Packing Co., Gibson Packing Co., Nebergall Meat Co., and the Valley Packing Co., and some 25 or 26 other competitors who do business in the same way we do and to a more or less extent slaughter and sell at wholesale.

1421 Frey & Company is a slaughtering meat packer in Seattle, which operates about 64 retail meat markets in that territory, through which it sells about 25% of its product, i. e., $3,000,000 out of $12,000,000; the balance at wholesale. In 1920 it had only 18 markets.

1422 Karsten Packing Company has plants at Tacoma and Spokane, Washington, with an annual volume of $9,000,000, of which it sells about 40% through 48 retail markets of its own; the balance at wholesale.

1423 Voluntary chains often designate to their retail members from whom they shall buy their supplies. The purchase of meats by voluntary chains through
1424 their central headquarters applies to a limited extent to smoked meats; but not to fresh meats, to any extent in our territory. Frey and Karsten follow the market in their retail prices; but in case of a surplus, lower the price and move it into consumption more quickly than independent or chain stores. This increases consumption
1427 possibly by those who do not feel able to eat meat at higher prices. Our prices vary as between different purchasers in different localities, as our products are perishable, and we have to sell them at prices that will move them.

1434 In addition to Frey and Karsten, five other small slaughtering packers in the State have between them a total of 15 retail markets. Grocery lines handled by these retail markets are limited to jams, pickles, jellies, condiments, fish, and sometimes bread.

The Frey markets are practically all located in leased space in market sections and are so located that groceries, fresh fruits, vegetables and bakery goods can all be purchased in the same location.

1434 In Washington and Oregon there are 616 regular chain grocery stores and 1240 voluntary chain grocery stores.

[fol. 1006] (57) DAVID DEGAN, Chicago, Illinois, testified:

1651 I am a livestock order buyer on the Chicago stockyards and buy cattle on order for packers located all over the east. I have been in the cattle business 38 years and was previously at various times cattle buyer for Sulzberger & Sons Company, and Wilson & Company who succeeded them. We handle on an average 25 to 30 carloads a week, or 1,300 to 1,500 loads a year, and belong to the Traders' Livestock Exchange.

1654 We do not buy for Armour, Swift, Cudahy, or Wilson, but in competition with their buyers. Sometimes competition on the Chicago market is very
1655 keen; sometimes it is not, depending on the supply and demand.

1657 We are the second largest buyers on the Chicago yards, Moog & Greenwald are first.

1662-9 (58) ALBERT E. HARRIS, Bureau of Animal Industry, Department of Agriculture, Washington, D. C., testified:

I am in charge of meat inspection records for the Department. Federal meat inspection covers all slaughtering and processing meatpacking establishments, any substantial amount of whose products is shipped in interstate or foreign commerce.

Our records show federally inspected meatpacking plants under the names of the following concerns for 1920 and 1930, as indicated in the following table: also which of those in 1930 did slaughtering and which processing only:

[fol. 1007]

Name	1930		1920
	Slaughtering	Processing	
A. & P.		15	
Kroger	2		1
1st Natl.		2	1
Pender		1	
Hygrade	5	5	1
Gobel	3	3	2
Frye	1	1	2
Natl. Dairy	1		1
Genl. Foods		2	
Glidden		1	

The slaughtering plants now shown for the HyGrade, Gobel, and National Dairy concerns were in 1920 and prior thereto separate, independent packing plants which have since been taken over by the amalgamating concerns.

1670 (59) C. B. HEINEMANN, Service Manager, Kennett Murray Livestock Buying Organization, testified:

This concern operates buying offices on 15 leading livestock markets of the country; also at numerous country buying points. I have been in the livestock business in various capacities since 1903, with railroads, meat packers, the National Livestock Exchange, the Institute of American Meat Packers, general manager of the Atlantic Stockyards, and finally with this concern.

[fol. 1008] We do order buying regularly for between 600 and 700 meatpacking establishments located off the yards where the immediate buying is done; also
1673 some for feeders; and in a normal year will handle
1674 5,000,000 head of hogs, 250,000 cattle, and 250,000 sheep.

1673-74 We have bought live stock for packers located in practically every state in the United States, but 95 per cent of our business is done for packers located east of the Rocky Mountains. Our orders are received direct from the packers by telegraph or telephone.

1675-81 We compete with numerous other order buying concerns, yard traders, and commission buyers on the various yards where we operate; and through them numerous packers buy in competition with each other at each of these yards.

1675 On the Chicago market there are approximately 300 outside packers who are constant buyers. I do not mean they will be there every day but perhaps every week. At East St. Louis, approximately 100 outside packers are constant buyers. Indianapolis has approximately 100 outside packers buying there. Omaha has approximately 80 outside packer-buyers; Sioux City approximately 80; Kansas City about 50; Louisville about 15; Montgomery about 60; Nashville 50; Detroit 25; Dayton 18, Fort Wayne 20.

1676 At Chicago there are 16 distinct order buying firms who buy for others outside of the Chicago

market. These 16 separate firms employ a total of 40 buyers. In addition to those, there are 6 commission firms on the Chicago market, with 6 buyers who fill outside orders. There are 225 yard traders, sometimes referred to as speculators, who buy for themselves for the
1677 purpose of reselling. There are a total of 60 buyers representing 20 local packers in the Chicago district and there are 4 outside packers maintaining salaried buyers on the market.

Cincinnati has 5 order buying firms with 16 buyers, 5 commission firms with 14 buyers filling orders and 4 yard traders and 45 buyers representing 22 local packers.

Dayton, Ohio has 1 order buying firm and there are 7 [fol. 1009] local packers at Dayton with 7 buyers and 18 packers located outside of Dayton are constant buyers on that market.

1678 At Detroit, there are 5 order buying firms with 6 buyers and 3 commission firms have 3 buyers. There are 10 yard traders and 25 buyers representing 15 local packers and there is one salaried buyer representing an outside packer.

At East St. Louis there are 14 reorganized order buying firms with 41 buyers, 68 yard traders and 54 buyers representing 25 local killers and 2 salaried buyers representing outside packers.

Fort Wayne has 2 order buying firms with 2 buyers and one commission firm with 2 buyers filling orders, 8 yard traders and 4 local packers employing 4 buyers. Approximately 20 packers buy on that market constantly.

1679 Indianapolis has 12 order buying firms with 35 buyers, 43 yard traders, 37 buyers representing 9 local packers and 2 salaried buyers representing outside packers.

LaFayette, Indiana, has 1 order buying firm with 3 buyers and several commission firms that frequently fill orders. There are 4 local killers with 4 local buyers.

At Louisville, there are 2 order buying firms with 10 buyers and 5 commission firms employing 25 buyers to fill orders. There are 6 buyers representing 15 large and small local killers.

1680 Approximately 10 packers located outside of Louisville buy constantly on the Louisville market and there are seasons when the outside buyer puts salaried employees on that market.

Montgomery, Ala., has one order buying firm with 3 buyers and 4 commission firms that occasionally fill orders, and 4 local killers employ their own buyers.

At Nashville, Tenn., there is one order buying firm and various commission firms that fill orders, 10 yard traders and 2 local packers with their own buyers.

Omaha has 9 order buying firms each with a buyer, 82 [fol. 1010] yard traders and 44 buyers representing 13 local packers, and 3 salaried buyers representing outside packers.

1681 Sioux City has 2 order buying firms, 8 local killers and 3 commission firms that fill orders on the market.

The carload lot is the unit of our service but not infrequently we have orders for a trainload of live stock for one outside buyer. In 1929, approximately 70% of the hogs bought on the East St. Louis market were purchased by order buyers buying for outside packers.

At Indianapolis, 50 to 59% of the hogs and 84% of the cattle and calves and 82% of the sheep and lambs purchased on that market are bought by order buyers for outside packers.

1682 At Nashville, 35% of the cattle, 65% of the calves and 60% of the hogs, and 80% of the sheep and lambs are purchased by order buyers for outside packers.

1682 The competition on the markets at which we oper-
1683 ate is keen and active at all times. My observation is that Armour, Swift, Wilson and Cudahy compete with each other at these various markets.

I have observed the process by which the live stock buying market which falls below others is brought back to a normal level. Where there is an undue depression in market prices at a market, it ordinarily must be from one or two causes—either a lack of buying demand or an overplus of supply. On the markets where we operate where that depression becomes noticeable on any day, we then strive by every means to throw into that market all possible orders with a view of bringing the supply to a normal basis. In other words, to get a demand to match the supply. We are constantly in touch with all the markets on which we operate. If we have orders at Chicago and find that the Omaha market has a lower price for the

grade of live stock desired, we advise our customer to let us replace that order on the market where he can
1684 buy to the best advantage. When switching of buying from one market to another occurs, there is immediately noticeable a stimulant in the buying end of that market, which helps in making the prices more firm. The market is brought back to normal.

[fol. 1011] There are various differentials between markets. The freight differential is one factor. The dressing yield is greater from live stock purchased close to killing. The expense of feeding in transit and the expected mortality of shipping in transit are additional factors. Taking these factors into consideration, it is found in actual practice that while markets sag or rise below or above each other they are brought into a normal level by the
1685 ordinary process of business. The markets have what we call a normal basis.

Our concern has never been the subject of any discrimination with respect to facilities or treatment accorded us.

I am familiar with the markets owned or partly
1686 owned by the defendant packers. The facilities turned over to us at those yards are excellently maintained and operated and we have no complaint or cause for complaint whatever at any of those markets.

I have never observed any unfair practices or sharp trading practices on any of the yards where we operate, in relation either to buyers on the one hand, such as our organization, or to producers.

1688 In buying for our patrons the greater number of our orders are within a price range, that is, with an upper and a lower limit. Sometimes we are permitted to use our own discretion. Out of our 600 or 700 packer customers, probably 350 represent year-round cus-
1689 tomers and include Swift, Armour, Wilson, and Cudahy. That is, we buy in common for these packers steadily, with the discretion to fix the price which we will bid, at least within certain limits, as market conditions or other conditions under which we buy may make desirable. The method of doing business at the various stockyards described above, to my personal knowledge, has continued since 1903.

[fol. 1012] (60) WILLIAM S. WARFIELD, President, Tolerton & Warfield Company, Sioux City, Iowa, testified:

1691 I have been with this concern since 1889. Until 1918 it was strictly in the wholesale grocery and jobbing business. That year we ventured into the retail business with one store and have grown to 105 retail
1692 stores at the present time, of which 36 have retail meat departments.

1693 These 36 stores are general food stores handling fresh meats, groceries, fruits, vegetables and other food stuffs.

The first of these was added in 1926. Our retail
1694 business has grown from $355,000 in 1920 to $4,461,000 in 1929, while our retail meat business in 1929 was $388,000.

1695 We continue our wholesale business in a territory radius of 150 miles from Sioux City, with 12 travelling salesmen.

1696 We also have a plant at Sioux City manufacturing peanut butter, pancake flour, extracts, jelly powder; and we roast our own coffee and pack our own vinegar.

1696 We also own 80 per cent of the capital stock of the Johnson Biscuit Co. of Sioux City, which manufactures crackers, cakes, candies and bread. We control a canning plant at Norfolk, Nebr., where we pack 11 different kinds of vegetables.

1697 We are also among the largest auto tire distributors in Sioux City, and sell gasoline and oil.

1697 Deliveries to our retail stores from our centrally-located warehouses are made principally by truck and in our wholesale business, deliveries, within a radius of 150 miles or so of Sioux City are made by truck. We started making shipments by truck in 1925 or 1926.

1699 Our wholesale business in 1920 was $4,000,000 to $4,500,000 and has fallen now to about $2,000,000.

1700 We were prompted to enter retailing because of the encroachment of the chain stores and found that it tended to alienate our existing retail customers to a great extent.

[fol. 1013] In our wholesale business we use car lot shipments only in canned fruits and vegetables direct
1701-2 from the canning plant, and in fresh fruits and vegetables from our warehouses. Less than car

lot orders are usually shipped by truck; and, in the few instances we cannot reach by truck, we use railroad l. c. l. refrigerator package car service, which runs on most lines out of Sioux City from one to three times a week. We use express very little.

[fol. 1014] (61) WILLIAM S. CLITHERO, Assistant Comptroller, Armour & Company, Chicago, recalled as a witness, testified:

1706 As head of our Research Department, I have prepared a series of statements containing data as to the business of Armour & Company in its various lines from 1920 to 1929. On March 24, 1923, Armour & Company took over the business of Morris & Company, who previously operated separately; but I have had access to the latter's figures for previous years since 1920 and have included them with the Armour figures for purposes
1708 of comparison. These statements, therefore, contain the combined figures for Armour and Morris both while operating separately and independently prior to March 24, 1923, and while operating under Armour control since their merger on that date.

1708-9 Petitioners' Exhibit 105 shows the combined Armour and Morris volume of sales, net worth, net results (or profits), and ratio of earnings to sales and to net worth. Where figures are in red, they indicate a loss instead of a profit. The fiscal year was changed during this period; and, where the figures are for other than an even year, the notes at the bottom indicate the number of weeks embraced. This explains the discrepancy between the net loss of 3.98% shown here for 1922 and one of 3.40% shown for the same year in Petitioners' Exhibit 72. In the latter the loss is adjusted to refer to the calendar year, while in the former it relates to a fiscal year of 61 weeks.

1710 Petitioners' Exhibit 106 is a break-down of the previous one, as between Armour and Morris from 1920 up to the time of their merger.

1711 Petitioners' Exhibit 107 shows our volume of do-
1712 mestic sales of edible products, in which we include everything that could be used for human food, while Exhibit 108 shows the proportion of these that are

meat and meat products, by which I mean all food products that come from cattle, hogs, sheep, and calves.

1777 The last two exhibits (107 and 108) do not include our export trade, which is very substantial, but I cannot state its size or proportions to domestic sales.

[fol. 1015] Petitioners' Exhibit 109 shows the proportions in which our sales of edible products for the month

1713-4 of August, 1930, were divided among our various classes of customers, while Exhibit 110 shows our total sales to chain store concerns for 1928, 1929, and 1930, and to our largest single customer, which is a

1776-7 chain store, for the year 1930, and its percentage to the total chain store business for that year. These figures include both sales to chains through their centralized buying offices and those made on orders at the option or discretion of local store managers. While there has been no segregation, the latter would represent about 25% of the totals here given.

1715-6 We did not keep data as to chain store sales prior to 1928. These chain figures do not include sales to voluntary chains.

1717 Petitioners' Exhibit 111 is a financial record of Armour & Company in thousands of dollars, from 1920 to 1929. For 1920 to 1923 the top figures are for Armour alone, and the combined Armour-Morris figures prior to the merger are given below.

1718 By "net worth", as used in these exhibits, I mean capital stock and surplus, which represents the stockholders' equity in the business and which would be called the invested capital at any given time.

Petitioners' Exhibit 112 shows the detail of this net worth of Armour & Company. The first three columns show the preferred stock issued and outstanding of Armour of Illinois, Armour of Delaware, and the North American Provision Company, which latter is a subsidiary of Armour of Delaware and took over the Morris properties on their acquisition. The fourth column is the outstanding common stock in Armour of Illinois.

[fol. 1016] Petitioners' Exhibit 113 shows the volume of Armour business in "unrelated lines," 1919 to 1930,

1720 by which I mean those commodities specified in the fourth paragraph of the Consent Decree of 1920.

1722 Petitioner's Exhibit 114 shows the tonnage vol-
ume of Armour's domestic sales, 1920 to 1929, sepa-
1773 rately in meat and meat products and in the various non-meat lines therein specified. It does not cover canned vegetables, which, however, are included in the total dollar sales in Exhibit 108.

1724 Petitioners' Exhibit 115 shows our purchases of
1725 livestock by species on the 10 leading livestock markets of the country for this ten-year period; and Exhibits 116 and 117 show points at which we purchased hogs direct in 1929 and the first half of 1930, as contrasted with purchases on public markets. These do not, how-
1770 ever, include our hog purchases at the Mistletoe yard at Kansas City, Kansas, nor the places from which shippers made shipments to that yard.

1725-6 Petitioners' Exhibit 118 is a list of the domestic subsidiaries and affiliated companies owned by Armour of Illinois and the percentage of voting stock owned or controlled in each. That exhibit lists as sub-
1733-5 sidiaries of Armour & Company the National Fruit Canning Company, of Seattle, Washington, of which, according to the exhibit, Armour & Company owns 87½% of its capital stock; and a plant at Westfield, New York, which is engaged in fruit preserving and jelly making. The former plant does an annual business of $3,500,000, according to my memory. Armour of Delaware also has subsidiaries, the principal of which is the North American Provision Company, holder of the Morris busi-
1735-6 ness. Armour does not control those companies here listed in which it owns less than 50% of the stock. The remaining stock of Julius Dahlman, Inc., Brooklyn, New York, is owned by Julius Dahlman, and of Meyer & Busch Company, Newark, New Jersey, by Mr. Busch. I do not know who owns the remaining
1761-3 stock of the Iowa Rendering Company. This list does not include the General Stockyards Corporation, in which Armour holds 32,000 shares or 35% of the total, and which in turn owns portions ranging from 4% to [fol. 1017] 36% in the capital stock of the six public stockyard market companies scattered over the United
1764 States, and one in Canada. Neither does the list include the Armour ownership of 59.5% of the stock

in the Jersey City stockyard Company, which is leased from the Pennsylvania Railroad.

1762 In the fall of 1927, Arthur H. Bosworth, as a member of the banking firm of Bosworth, Chanute, Loughridge & Co., of Denver, Colo., who had purchased Armour and Company's stock in the Denver Union Stock Yards Co., opened negotiations with Armour and Company with the view of purchasing all of its stock in stock yard companies. Mr. Bosworth associated with him in this transaction the banking firm of Stone & Webster and Blodgett, Inc., of New York and Chicago. As a result of negotiations which followed Armour and Company, on January 11, 1928, sold to the General Stock Yards Corporation its entire interest in Ft. Worth Stock Yards Co., Sioux City Stock Yards Co., St. Paul Union Stock Yards Co., Union Stock Yards Company of Toronto, St. Louis National Stock Yards Co., and Bourbon Stock Yards Co. As a part of this transaction Armour and Company
1763 acquired 32,000 shares of the capital stock of General Stock Yards Corporation, representing a 34.97% stock interest in that company. The General Stock Yards Corporation was organized by the banking firms mentioned independently of Armour and Company, and was incorporated under the laws of Delaware January 11, 1928, and is what is commonly known as an investment trust. Armour and Company does not hold any
1764 stock at any stock yards company other than 59½% interest in the Jersey City Stock Yards Co.

1726-8 Petitioners' Exhibit 119 shows the number of branch-houses operated by Armour & Company, including the Morris Business, each year from 1920 to 1929. This includes all branch houses operated either by the parent company or any of its subsidiaries. They are located according to trade conditions.

[fol. 1018] Petitioners' Exhibit 120 shows the volume of our branch-house sales annually from 1920 to 1929.

1729 Petitioners' Exhibit 121 shows refrigerator cars
1730 owned by Armour & Company each year for the same period; also the combined Armour and Morris refrigerator car holdings in 1920 and a comparison of that figure with the figure for 1929.

1732 Petitioners' Exhibit 122 shows the number of car
1736 routes operated by Armour and Company with its own refrigerator cars, each year from 1920 to 1930,

while No. 123 contains my estimate of the number
1735-6 of towns in Armour branch-house and car route territories served by us in 1930. The reduction in car routes shown since 1920 represents car routes replaced by motor truck and railroad refrigerator service. As railroads increase their refrigerator cars and we can use that service, we do so.

1737-9, 1760 Petitioners' Exhibit 124 shows by months since August, 1929, in dollars, the business done by Armour & Company in non-meat food commodities listed in the fourth paragraph of the Consent Decree. The consignment sales listed in the third column represent sales for the account of others and are in addition to the business represented in the preceding columns.

[fol. 1019] Petitioners' Exhibit 125 is a statement of companies whose business assets and fixed properties
1739 have been purchased by Armour & Company since 1920, together with the commodities they handled, their volume of business before and after acquisition, the territory they served, and the Armour units serving that territory prior to purchase and their volume of business.

1741 Petitioners' Exhibit 126 is a file of Armour & Company annual financial reports for the years 1921 to 1929, which include the business of all Armour subsidiaries, wholly or partly owned or controlled.

1757-9 The improvements in Armour's financial condition since 1923, referred to in the 1928 report, were accomplished principally by the conversion of fixed assets into liquid assets, the payment of debts, and the reduction of inventories—the result of which, as Mr. White suggests, was to place Armour & Company in a very strong position as compared with the beginning of the period.

1742-3 Armour operates 1,300 truck routes. Of these, those handled by 250 trucks, mostly operated by general trucking concerns, have replaced 109 route cars that have been taken out of service.

1744 The data contained in paragraph 23 of the Armour petition for modification in this case, headed "Changes in capital stock, funded debt, etc., since February, 1920", was prepared by me from our records and is correct. Armour & Company has 26,000 common stock holders and 54,000 preferred. Both are voting stocks with

equal rights, share for share, and it requires 1,600 stockholders to make up a majority of the total voting power.

In 1920 all of Armour's common stock was con-
1745 trolled by the Armour family, and there were 7,400 preferred stock holders. No one family controls the company's voting stock now.

[fol. 1020] Petitioners' Exhibit 127 is a financial record of the Kraft-Phenix Cheese Corporation since
1745-6 1924, with the history of its organization, and its acquisition in May, 1930, by National Dairy Products Corporation, prepared from Moody's Industrial Manuals.

Petitioners' Exhibit 128 is a similar statement for the Glidden Company, prepared from the same source.

1747-9 Petitioners' Exhibits 129 to 134 are six volumes prepared on the basis of questionnaires sent out through our research department to branch-house and car route managers and salesmen. They list competitors operating in Armour & Company branch-house and car route territory in the meatpacking, produce, and wholesale grocery businesses. In produce we include butter, eggs, cheese, and poultry, or any one or more of them.

(The last named exhibits are substantially similar to Petitioners' Exhibits 79 to 84, giving the same information as to competitors of Swift & Company. It is conceded that both Swift & Company and Armour & Company do business throughout the United States and that each encounters substantially the same competitors and numbers thereof as does the other in all their respective trade areas.)

1755 Under meat competitors in Exhibits 129 and 130, we include all concerns selling meats to the retail trade, whether they do their own slaughtering or not.

1749-50 Petitioners' Exhibit 135 is a list of wholesale grocers owning and operating retail stores in 1930, with their location and the number of stores operated in 1920, and the number of the stores operated that contained meat departments.

1750-1 In addition to the six chain store concerns (A. & P., American, Bohack, Kroger, First National, and Pender) operating federally inspected packing plants, as testified to by Mr. Harris, of the Bureau of Animal In-

dustry, data which I have prepared shows other concerns with meatpacking establishments that operated a total of 698 retail stores in 1930 as compared with a total of 199 [fol. 1021] in 1920. I do not know the number of concerns nor that they all have federal inspection, but they were classified as meat dealers or packers.

Out of the defendants named in the Consent De-
1752-3 cree of 1920, Armour & Company of Texas was dissolved March 23, 1923; the Colorado Meat & Provision Company was dissolved June 28, 1923; J. Ogden Armour died August 16, 1927; Charles W. Armour died March 22, 1927; Frederick W. Crowell severed all connection with Armour or its subsidiary companies August 2, 1924.

In addition to the edible products referred to in
1786 the exhibits I have identified, Armour & Company manufactures a list of inedible products the principal of which are hides, fertilizer, greases of various kinds, and soap.

1660, The following stipulation of fact and testi-
1794-1859 mony was admitted and received in evidence:

[fol. 1022] STIPULATION OF FACT AND TESTIMONY

It is stipulated that T. Henry Foster, if called as a witness by petitioners for modification in these proceedings, would testify—

That he is president of John Morrell & Co., a corporation, engaged in the meat packing business, with general offices at Ottumwa, Iowa, having packing plants at Ottumwa, Iowa, and at Sioux Falls, South Dakota, which plants cover approximately 150 acres of land and are modern and fully equipped;

That the aggregate annual capacity of Morrell & Co. is 2,500,000 head of hogs, cattle and sheep;

That Morrell & Co. owns fifteen branch houses, 400 refrigerator cars, and leases an additional 200 refrigerator cars from the Union Refrigerator Transit Company;

That Morrell & Co.'s slaughterings of hogs, cattle, calves and sheep during the years 1920 to 1929, inclusive, were as follows:

Year	Hogs	Cattle	Calves	Sheep
1920	786,055	81,483	7,449	9,879
1921	886,283	72,827	6,879	13,074
1922	1,085,213	94,826	7,328	10,303
1923	1,349,775	106,284	10,012	7,449
1924	1,540,197	118,472	12,348	5,928
1925	1,353,120	140,136	15,513	7,068
1926	1,453,820	172,583	16,326	11,517
1927	1,561,461	170,634	16,709	14,833
1928	1,775,817	182,224	11,519	12,557
1929	1,857,197	200,937	12,112	17,501
Total	13,648,938	1,340,406	116,213	110,109

Grand Total of All Animals

13,648,938 hogs
1,340,406 cattle
116,213 calves
110,109 sheep

15,215,666 animals

That the total sales in dollars of Morrell & Co. for the ten years 1920 to 1929, inclusive, were as follows:

[fol. 1023]

1920	$51,944,907.09	
1921	44,380,045.81	
1922	52,690,536.93	
1923	57,178,362.76	
1924	60,950,766.39	
1925	74,657,012.66	
1926	81,393,108.66	
1927	76,250,174.88	
1928	84,651,597.62	
1929	101,976,252.42	(13 months)

That thirteen months' sales are included in the last figures given in the preceding table by reason of the fact that Morrell & Co. made a change last year in its fiscal year period;

That Morrell & Co.'s invested capital, or net worth, on November 2, 1929, amounted to $20,000,000, of which sum $4,213,817.32 constitutes surplus;

That the net earnings of Morrell & Co. for the thirteen months' period ended November 2, 1929, amounted to $3,435,799.42;

That Morrell & Co.'s net earnings from 1924 to 1928, inclusive, were as follows:

1924	(year	ended	March	31)	.....	$2,223,840.00
1925	"	"	"	"	.....	2,939,806.00
1926	"	"	"	"	.....	1,336,733.00
1927	"	"	"	"	.....	1,906,782.00
1928	"	"	"	"	.....	1,591,488.00

That Morrell & Co. buys practically all of the livestock killed in its Ottumwa plant directly from producers located near that community. Hogs are shipped directly to the plant by producers, and purchases are made at the prevailing market prices on the dates of sale less freight differential. The Company sends buyers into the country to purchase cattle. The plant at Sioux Falls, South Dakota, obtains its requirements of livestock by direct purchases, and also by purchases on the public market located at Sioux Falls. Extensive and active competition is encountered by the Company in the purchase of livestock at all times. The producers are well informed regarding receipts and prices on public market, and the Company cannot acquire livestock except by paying the market price less the differential;

That Morrell & Co. sells meat in every State of the United States and in England, Continental Europe and other foreign countries. Approximately 35 per cent of the Company's sales are made through its branch houses and [fol. 1024] the balance by the route car method and by trucks. The Company has its trucking done under contract with Redman of Ottumwa, who trucks to Chicago, Haw Dagitt of Ottumwa, and Mercer of Burlington, who truck in Iowa. Extensive and active competition is encountered at every place where the Company sells meats. The Company sells its privately branded products;

That Morrell & Co. has business relations with Swift & Company and Armour & Company, and both buys from and sells to these corporations. Morrell & Co. has always found the business methods and dealings of Swift and Armour to be fair;

That Morrell & Co. has no difficulty in competing with the larger packers. It can buy livestock on the same basis as the larger packers and just as cheaply, and has no difficulty in selling meats in competition with the larger packers, but on the contrary is on a more favorable competitive basis because the overhead and selling expense of the small

packer are less proportionately than that of the larger packers;

That Morrell & Co. sells commodities other than meat and meat products, which commodities include orange marmalade; plum pudding; beans, including Du Page Red Kidney, Yorkshire Farm Fancy Whole Green Beans, and Riverdale Cut Green Beans; condiments, including Exposition Brand Yellow Mustard, Exposition Brand Horseradish, Yorkshire Farm Yellow Mustard, and Yorkshire Farm Horseradish; peas; hominy; pumpkin; sauer kraut; tomatoes; catsup; corn, including Yorkshire Farm Fancy Country Gentleman Corn, Yorkshire Farm Fancy Crosby Corn, and Riverdale Standard Iowa Sugar Corn; beans (dry), including C. H. P. Michigan Pea, and Great Northern; mincemeat; margarine; cheese; milk; eggs; fruits, including apples, apricots, blackberries, and cherries; peanut butter; and other food products;

That Morrell & Co. by experience has found that dealing in grocery items and other non-meat food products results in reducing the cost of doing business, especially at branch houses where at times the available supply of packing house products is insufficient to keep their sales force busy;

That Mr. Foster finds keen and active competition existing at present in both the buying of live stock and the selling of meats, and also finds that the entire food industry [fol. 1025] is highly competitive; in his opinion monopoly in the packing industry and in the general food industry is an impossibility because there is no possible way of controlling the raw materials, the commodity dealt in is perishable, and the business can be entered with limited capital.

It is further stipulated that JOHN W. RATH would testify as follows:

That he is president of the Rath Packing Company, of Waterloo, Iowa, and has been president of that Company since 1898;

That the Rath Company's plant, occupying about twenty acres of ground, is located at Waterloo, Iowa. It is a large and thoroughly modern plant, and has been supplemented by two large buildings, a tank house and a manufacturing and storage building erected within the last two years.

Fixed assets are carried on the Company's books at a net depreciated value of $2,831,500.00;

That the business has grown from a slaughter of 200,000 hogs a year and a very few cattle in 1920 to a slaughter of 980,000 hogs and 40,000 cattle in 1929. The Company's sales have increased from $8,000,000 in 1920 to $33,932,000 in 1929;

That the Rath Packing Company has nine branch houses located in Texas (three branches), California (two branches), Washington, Iowa, and Illinois (two branches). It does not own any refrigerator cars but leases its refrigerator cars from the North American Car Company. It has no difficulty in obtaining the cars it requires;

That livestock is purchased by country buyers and over the telephone and at the Waterloo plant. Occasional purchases are made on the public market. The livestock shipped directly to the plant is purchased at the prevailing market prices less freight from point of origin. Keen and active competition is encountered in the purchase of livestock. The producers who sell directly to the plant are well informed regarding market conditions. The Company maintains a radio in its office and also at its private yard adjacent to the packing plant;

[fol. 1026] That the products of The Rath Packing Company are sold throughout the entire United States and also in Great Britain, Continental Europe and other foreign countries. The Company markets its products under its own private brand names;

That keen and active competition is encountered at all places where the Rath Company sells its meats and packing house products;

That the distribution of meats is made not only by car route and through branch houses but also by motor truck; the Rath Company owns and operates thirty trucks out of Waterloo;

That the Rath Packing Company has business relations with Swift and Armour, and has always found their business methods to be fair;

That the Rath Company has no difficulty in competing with the larger packers; it is able to buy its livestock on the same basis as the larger packer and can successfully compete with the larger packer in the selling of meat;

That the Rath Company in addition to meat and meat products sells fish, vegetables, fruits, jams, jellies, sauer kraut, cheese, butter, and butterine;

That Mr. Rath finds strong competition in the buying of livestock and in the selling of meat products and other foods dealt in by his Company; in his opinion monopoly is not possible in the packing or other food industries because of the inability of any one or of any small group to control the raw material, and because of the perishability of the commodities dealt in and the fact that the business can be entered with limited capital.

[fol. 1027] It is further stipulated that WILLIAM E. PRICE would testify as follows:

That he is first vice-president and general manager of Jacob Dold Packing Company, Buffalo, New York, who are engaged in meat packing and other food lines;

That the Dold Company owns packing plants at Buffalo, New York, and Wichita, Kansas; has about twenty-five branch houses located in different parts of the United States and has wholesale markets at Chicago, Indianapolis, and St. Louis;

That the Dold Company in addition to meats and meat products deals in fish, groceries, coffee, cocoa, catsup, mayonnaise, dry beans, dry peas, red jelly, pure jams, vinegar, fruit, syrups, honey, canned vegetables and canned fruits; pickles, olives, noodles and prunes; about 10 per cent of the Company's entire business is in food products other than meats and meat products;

That the Dold Company's sales in 1920 amounted to $56,512,175, and in 1929 to $55,558,597, and in the years intervening between 1920 and 1929 were as shown in Mood's Manual of Industries;

That the Dold Company finds that its motor truck transportation delivery of products has greatly increased since 1920 and that chain store buying has greatly increased since 1920; that there is no shortage of refrigerator cars, all such cars as are needed in its business are readily available to it;

That the Dold Company is in strenuous competition with Swift & Company and with Armour & Company and with other packers and food concerns;

That Mr. Price finds the methods of Swift and Armour and other competitor packers are entirely fair;

That Mr. Price is of opinion that it is impossible to have a monopoly in the meat packing business.

[fol. 1028] It is further stipulated that FRANK M. FIROR would testify as follows:

That he is President of Adolph Gobel, Inc., and that the present company was incorporated August, 1926, as a successor to a company of the same name founded in 1891; that the company and its subsidiaries manufactures and sells fresh and cured meats of practically all kinds and also sells fish, mustard, horseradish and pickles and as well operates cafeterias and lunch stands as hereinafter shown; the company distributes its products by sale to delicatessen stores, butchers, restaurants, groceries, and to a chain of its own retail stores operated by a subsidiary as hereinafter stated in this stipulation.

That during the last few years the Company has pursued a policy of expansion and acquired a number of businesses similar to that of the Gobel Company in localities where Gobel products could be advantageously marketed. In carrying out this expansion program, the Company has acquired since 1926 all of the common and preferred stock of George Kern, Inc., New York; all of the stock of Hertz Bros., Inc., Milton, Pa.; all of the common and convertible preferred stock of Merkel, Inc., Jamaica, Long Island; all the stock of C. Lehman Packing Company, Brooklyn, New York; all the stock of United Sausage Company, Boston, Mass., of Playland Refreshment Corporation, of the Howard Provision Company, and has also acquired all the stock of Keane-Loffler, Inc., of Washington, D. C., and in 1929 acquired over 96 per cent of the common stock of Jacob A. Decker & Sons, of Mason City, Iowa.

That the nature and extent of the businesses of the above-named subsidiary corporations are:

George Kern, Inc., New York: This company owns a large packing plant at 11th Avenue and 40th Street, New York, with complete equipment for killing and dressing hogs, as well as processing and curing meats.

Hertz Bros., Inc.; Owns a provision house at Milton, Pa.

Merkel, Inc.: Operates a large provision plant at Jamaica, Long Island, and also operates 30 retail meat stores located

in Jamaica, Brooklyn and Jersey. The stores are known as the Merkel Chain. The retail sales amount to more than $2,000,000 a year, and were $1,411,632.51 during the first 32 weeks of 1930. In 1920 the retail sales were less than [fol. 1029] 25 per cent of the present sales. The business of Merkel, Inc. could have been purchased for $125,000 in 1922, but the purchase price paid in 1928 was $2,000,000. The company's plant was erected in 1922.

Playland Refreshment Corporation: This Company is engaged in the concession business, such as soda water, ice cream, candy, frankfurters, etc., and operates concessions at Playland Park, and Rye Beach, New York.

Keane Loffler, Inc., Washington, D. C.: This Company was organized in 1928 to take over three businesses formerly carried on under the names of A. Loffler Provision Co., T. F. Keane Company and Keane Provision Co. The company owns and operates two meat packing and provision plants and an abattoir and also four wholesale and retail meat markets in Washington, D. C. The abattoir kills on a fee basis. All the killing is Kosher.

Jacob E. Decker & Sons, of Mason City, Iowa: The business of this company was established in 1899. It was incorporated in 1901. It owns and operates a large modern packing plant at Mason City, Iowa, having a daily capacity of 5,000 hogs. It kills approximately 600,000 hogs a year. The company owns 190 refrigerator cars and operates nine branch houses located at Minneapolis, Minn., Little Rock and Texarkana, Ark., and in Dallas, Beaumont, Houston, San Antonio and Tyler, Texas. Its products are sold directly and through all of the Gobel subsidiaries, including the Merkel Chain of retail stores.

That other subsidiaries of the Gobel Company are:

C. Lehman Packing Company, Brooklyn, New York.

United Sausage Company, Boston, Mass., with a packing and provision plant at Boston.

Howard Provision Company, operating a stand in West Washington Market, New York.

That the company sells its products all over the United States.

That buying of live stock for Adolph Gobel, Inc. and its subsidiary companies is all conducted from New York, with the exception of the buying of Jacob E. Decker & Sons.

This company buys 75 per cent of its live stock directly at its plant and the balance at public markets. The buying of live stock, exclusive of the Decker buy, is done through order-buyers. Purchases are made at all the principal markets. Order buyers call the New York office by telephone each morning and report regarding market receipts and prices. The Company keeps in close touch with receipts and prices at the public market and places its orders at the markets which it considers the most favorable. The company also makes some purchases of live stock at [fol. 1030] private yards and has a concentration point in Muncie, Indiana.

That keen and active competition is encountered in the purchasing of live stock at all markets and in the country. The company is able to buy live stock as advantageously as any other packer, and has the same opportunity for buying as Armour and Company or Swift & Company.

That the distribution of meats and packing house products, particularly in the East, is made largely by trucks.

That active competition is encountered in selling in all places where the company is engaged in business.

That it is further stipulated and agreed that JAMES S. AGAR, if called as a witness by petitioners, would testify that he is the President of Agar Packing and Provision Company of Chicago; that said Company is engaged in commission slaughtering and the general meat packing business and has two packing plants located at Chicago; that said plants consist of a five-story and basement building with a chilling capacity of 3,000 cattle and 2,000 hogs, a six-story tank house, a five-story abattoir equipped for slaughtering 400,000 hogs and 75,000 cattle annually, and other buildings; that keen and active competition is encountered by the Company in the purchase of live stock and in the sale of the products thereof and that there does not exist at the present time any monopoly in the packing industry.

That it is further stipulated and agreed that BERNARD J. BRENNAN, if called as a witness, would testify that he is the President of Brennan Packing Company; that said Company is engaged in the general packing business at Chicago and has a plant at Chicago having a capacity for the slaughter of 1500 hogs a day and a capacity for the cold

storage of 17 million pounds of meat and that the facts relating to its sales, earnings, etc., are correctly set forth in petitioners' Exhibit No. 71; that there exists at the present time keen and active competition in the purchase of live stock and in the sale of meat and meat products, and that no monopoly exists in the packing industry.

That it is further stipulated and agreed that R. C. DICKINSON, if called as a witness, would testify that he is the Vice President of Louis Burke, Inc. of Philadelphia; that said Company is engaged in the general packing business [fol. 1031] and owns and operates a packing plant located at Philadelphia, Pa., that the said Company purchases hogs on the Pittsburgh, Buffalo, Cincinnati, and Indianapolis markets through order buyers; that a satisfactory competitive condition exists in the industry and that the defendant packers do not control the business generally or at any particular place or operate in any manner in restraint of trade.

That it is further stipulated and agreed that HIRAM R. ELLIOTT, if called as a witness, would testify that he is the President of Elliott Packing Company of Duluth, Minnesota; that said Company slaughters about 1500 hogs and about 400 cattle per week and purchases its live stock directly from live stock producers located in the territory surrounding Duluth; that he is also President of the Northern Packing Company located at Grand Forks, North Dakota and that said Company slaughters approximately the same quantity of live stock as is slaughtered by said Elliott Packing Company; that there is plenty of competition between the defendant packers and between all packers both in the purchase of live stock and in the marketing of the products thereof.

That it is further stipulated and agreed that MORTON FOX, if called as a witness, would appear and testify that he is the President of Greenwald Packing Company located at Baltimore, Maryland; that said Company slaughters from 1100 to 1200 head of cattle per week and does a business of approximately $5,000,000 per year; that said Greenwald Packing Company does a larger business in the Baltimore territory than is done by either Armour and Company or Swift and Company; that active competition exists

in the industry and that there is no monopoly at the present time in any phase of the packing industry and that there is no danger of a monopoly being acquired by any packers.

That it is further stipulated and agreed that GEORGE L. FRANKLIN, if called as a witness, would appear and testify that he is the President of Dunlevy-Franklin Company located at Pittsburgh, Pa.; that said Company slaughters from 1000 to 1500 hogs and approximately 200 cattle per week and sells dressed and fresh beef and pork products in and around Pittsburgh; that said Company does an intrastate business only and is not under Federal inspection [fol. 1032] but that the products of said Company are sold in direct competition with the products of the defendant packers; that said Company buys its live stock on the St. Louis, Chicago and Indianapolis markets and encounters extensive and active competition both in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that JAMES A. GALLAGHER, if called as a witness, would appear and testify that he is the President of Union Meat Company, which is located at San Antonio, Texas and engaged in the packing business; that said Company buys its live stock directly from producers and upon the San Antonio market and sells its products largely locally; that it encounters active competition in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that MAX HAHN, if called as a witness, would appear and testify that he is the President of the Max Hahn Packing Company located at Dallas, Texas; that said Company is engaged in the business of slaughtering hogs and cattle and marketing the products thereof; that it buys its live stock directly from producers and upon the Fort Worth market and encounters active competition both in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that JAY C. HORMEL, if called as a witness, would appear and testify that he is the President and General Manager of George A. Hormel & Company; that said Company owns and operates a packing plant located at Austin, Minnesota and oper-

ates 14 branch houses; that it is engaged in the general packing business and slaughters all classes of live stock and also deals in poultry products, fish, malt syrup, relishes, sauerkraut and other food products; that the Company purchases its live stock directly from producers and also on the public market and encounters active and extensive competition both in the purchase of live stock and in the sale of meats and other products in which the Company deals; that there does not exist at the present time any monopoly in either the purchase of live stock or the sale of meats or meat products and that the witness is of the opinion that it would not be possible for any concern or group of concerns to acquire a monopoly in either [fol. 1033] the packing industry or the food industry generally; that the facts relating to the Company's sales, earnings, etc. are correctly set forth in petitioners' Exhibit No. 71.

That it is further stipulated and agreed that MYRON MCMILLAN, if called as a witness, would testify that he is the President of J. T. McMillan & Company of St. Paul, Minnesota; that said Company owns and operates a packing plant at St. Paul, Minnesota, at which it slaughters live stock and also manufactures and processes carcass hogs which it purchases from Jacob E. Decker & Sons of Mason City, Iowa; that said Company purchases live stock directly from producers in the vicinity of St. Paul and also on the St. Paul public market and sells its meat products principally within a radius of 200 miles of St. Paul though it also makes sales at distant points through brokers; that the Company encounters active and extensive competition in the purchase of live stock and in the sale of the products thereof; that there is located at St. Paul a packing concern known as the United Packing Company which kills cattle for six or eight wholesale beef houses located in St. Paul and Minneapolis and that said United Packing Company sells more dressed beef in Minneapolis and St. Paul than Armour and Company and Swift and Company combined; that the witness is of the opinion that it would not be possible for any packers or group of packers to achieve a monopoly in the packing industry.

That it is further stipulated and agreed that AUGUSTUS MILLER, if called as a witness, would testify that he is the

President of Charles Miller & Company of Secaucas, New Jersey; that said Company is engaged in the pork packing business and slaughters from eight to ten thousand hogs a week; that the Company is not engaged in manufacturing except as to lard but sells dressed hogs; that the Company purchases its live stock upon the Buffalo, Pittsburgh, Indianapolis, Toledo and Chicago markets, and encounters most active competition in the purchase of live stock and in the sale of dressed hogs; that there is no monopoly in the packing industry at the present time and in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that J. C. PAYTON, if called as a witness, would testify that he is the President of Payton Packing Company located at El Paso, [fol. 1034] Texas; that said Company is engaged in the general packing business and that active and extensive competition exists both in the purchase of live stock and in the sale of the products thereof; that there is no monopoly in the packing industry and that in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that A. J. RIESTER, if called as a witness, would appear and testify that he is the President of William Zoller & Company, meat packers located at Pittsburgh, Pa.; that said Company slaughters from 1800 to 3000 hogs a week and also slaughters cattle and lambs; that it sells its products locally through salesmen to retail butcher shops, delicatessen stores and hotels and makes deliveries by trucks; that the entire packing industry is highly competitive; that no monopoly exists therein and that in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that HOMER H. SMITH, if called as a witness, would appear and testify that he is the Secretary of the Drummond Packing Company of Eau Claire, Wisconsin; that said Company is engaged in the pork packing business and slaughters approximately 60,000 hogs per year, which are purchased directly from producers located in the vicinity of Eau Claire; that the Company sells its products within a radius of fifty or sixty miles of Eau Claire and makes deliveries by trucks and also sells its products through a large retail meat market owned

and operated by the Company at Eau Claire; that there is most active and keen competition among all packers both in the buying and selling end of the business.

That it is further stipulated and agreed that FRANK J. SULLIVAN, if called as a witness, would appear and testify that he is the President of Sullivan Packing Company of Detroit, Michigan; that said Company is engaged in a general packing business; that its plant is located at Detroit, Michigan and that the Company has two branch distributing houses, one located in Detroit and the other in Toledo and that its sales in 1929 amounted to $9,741,732.00; that the Company encounters keen and extensive competition both in the buying of live stock and in the selling of meat and meat products; that no monopoly exists in the packing [fol. 1035] industry and that in the opinion of the witness it could not be possible for any packer or group of packers to acquire such a monopoly.

It is further stipulated that the individuals, firms and corporations, engaged in the meat packing business in the United States, to the number shown or which may be shown by evidence in this case, owned and controlled independently of each other, are in active competition with each other in the purchase of live stock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell.

It is further stipulated and agreed that during the year 1924 WILSON & Co. (INC.), a corporation organized under the laws of the State of New York and one of the primary defendants herein, was negotiating an extension or renewal of its matured and maturing bank loans and certain creditors of said Company instituted suits against it and other creditors threatened to bring suits and to attach its property; that on August 26, 1924, a creditor of Wilson & Co. (Inc.) filed a Bill of Complaint against it in the District Court of the United States for the Southern District of New York alleging that said Wilson & Co. (Inc.) was insolvent and praying for the appointment of a receiver to take charge of and conduct its business; that on said August 26, 1924, Wilson & Co. (Inc.) filed its Answer in said suit admitting the allegation of said Bill of Complaint and joining

in the prayer for the appointment of a receiver and on August 26, 1924, said District Court entered an order appointing receivers to take charge of the properties and operate the business of Wilson & Co. (Inc.); that thereafter ancillary receivers of Wilson & Co. (Inc.) were appointed by the United States District Court in various districts where properties of Wilson & Co. (Inc.) were located and such receivers did after the dates of their respective appointments take charge of, manage and operate the properties and business of said Wilson & Co. (Inc.); that on August 27, 1924, certain creditors of said Wilson & Co. (Inc.) filed a petition in bankruptcy against it in said District Court of the United States for the Southern District of New York and that thereafter said Wilson & Co. (Inc.) was adjudicated a bankrupt in said proceeding.

That thereafter said bankruptcy proceeding against Wilson & Co. (Inc.) was dismissed and all the properties and [fol. 1036] assets and the business of said Wilson & Co. (Inc.), a primary defendant herein, were sold and transferred by said receivers of Wilson & Co. (Inc.) pursuant to decrees of sale entered in said receivership proceedings and said properties, assets and business of Wilson & Co. (Inc.), a primary defendant herein, were acquired by a new corporation organized under the laws of the State of Delaware under the name of Wilson & Co. (Inc.), and since such acquisition have been and now are owned and operated by said new corporation.

[fol. 1037] It is further stipulated that the following named persons, residing at the cities indicated, and being officers of the organizations and/or associations named, are producers of live stock, including cattle, hogs, sheep and lambs, in the States indicated by their residences and organizations; that the said persons are available to the petitioning defendants, Swift and Armour, as witnesses, and that they would, if called to the witness stand and sworn, testify in substance that there is keen and active competition in the buying of their live stock; that they, and the members of their respective organizations, are treated fairly, and are not subjected to unfair trade practices, in connection with the selling by them and the buying by representatives of the defendant packers, and other packers and buyers, of their live stock; that they sell their

stock, under competitive conditions, in the live stock market yards in the various sections of the country, and directly to packers at their private yards and to buyers engaged in direct marketing near places of production; that based upon their experience in the live stock industry each of said witnesses is of opinion that there is not and cannot be a monopoly of said industry; that based upon their experience in said industry each of them is of opinion that live stock could be marketed more profitably to the producer if the large meat packing companies engaged in marketing at retail as well as at wholesale; that based upon the same experience each of said persons is of opinion that his industry would be benefited if the large meat packing companies were permitted to sell foodstuffs other than, and in addition to, meat food products, to the end that the cost of distributing meats and other live stock products might be shared by non-meat foodstuffs handled and distributed by the same persons, firms and corporations who engaged in the handling, distributing and selling of meats; that each of said persons, and the members of their respective organizations, receives prompt and reliable information respecting market conditions, receipts, trading and prices of live stock of the character dealt in by them, and that this enables them to select their own markets and times to make shipments, to the best advantage to themselves, to the extent that such selection is practicable in the live stock industry. Said witnesses are:

[fol. 1038] J. Elmer Brock, Pres., Wyoming Stockgrowers' Association, Buffalo, Wyoming;
R. W. Brown, Missouri Farm Bureau Federation;
Dan D. Casement, Manhattan, Kansas;
Kenneth Chalmers, Colorado Wool Growers' Ass'n;
James Cook, Northwestern Co-op. L. S. Shippers' Association, Clearwater, Minn.;
J. M. Coyner, Secretary, Wisconsin Livestock & Meat Improvement Council, Chairman, Committee of National Swine Growers' Association on Register of Performance for Swine, Madison, Wisconsin;
E. L. Dana, Parkman, Wyoming;
B. F. Davis, Colorado Stockgrowers Association, Pres., Colorado Farm Bureau, Past Sec'y, Wyoming Stockgrowers, Denver, Colorado;
Dr. George M. Babcock, Rock Island, Illinois;

A. E. De Ricqles, Denver, Colorado;
T. J. Drumheller, Washington Wool Growers' Association;
W. I. Drummond, American Farm Congress, Kansas City, Mo.;
Earl Elijah, Eastern Iowa L. S. Marketing Association;
Knute Espe, Iowa Cooperative Live Stock Shippers Association;
H. W. Farr, Pres., Nebraska-Colorado Lamb Feeders Association, Greeley, Colo.;
Dr. I. L. Gotthelf, Pres., Saguache Lamb Feeders' Association, Saguache, Colo.;
Robert Graham, Pres., Nebraska Stockgrowers' Association, Alliance, Neb.;
[fol. 1039] Mac Hall, Denver, Colorado;
F. W. Harding, General Executive, American Shorthorn Breeders Association, Chicago, Ill.;
Mr. Harris, Coop. Auction Yards, Kentucky;
Dan Hildebrand, Nebraska Improved Live Stock Breeders' Association, and Nebraska Cattle Feeders' Association;
Harry Hopley, Pres., Interstate Organization of Meat Producers, Atlantic, Iowa;
Professor E. H. Hostetler, North Carolina Agricultural College, Secretary, Southern Livestock Association, Raleigh, N. C.;
J. W. Hudelson, Pomona, Kansas;
A. A. Johns (Senator), Arizona Wool Growers' Association, Prescott, Ariz.;
Ben Kemper, Denver, Colorado;
R. M. Kleberg, Corpus Christi, Texas;
R. P. Lamont, Jr., Pres., American Hereford Breeders Ass'n, Pres., Western Packing Company at Denver, Larkspur, Colo.;
Fred F. McArthur, Oakland, Iowa;
S. W. McClure, Idaho Wool Growers' Association;
Ray McElrath, Moville, Iowa;
Arden McKee, Pres., National Swine Growers' Association, Preston, Iowa;
Sol Mayer, Member, Sheep & Goat Raisers' Association, San Angelo, Texas;
Jewell Mayes, Sec'y Missouri State Board of Agriculture, Jefferson City, Mo.;

[fol. 1040] A. R. Mitchell, Former President, American Hereford Cattle Breeders' Association, Member, New Mexico Stockgrowers, Albert, N. M.;
P. C. Murphy Co-op. Wool Growers Association of South Dakota;
Floyd Nichols, Capper Press, Topeka, Kansas;
E. A. O'Neil, President, Alabama Farm Bureau Federation;
L. B. Palmer, Ohio Farm Bureau Federation;
E. A. Phillips, Secretary, Montana Stockgrowers' Association, Helena, Mont.;
F. A. Phillips, Cattle & Horse Raisers Ass'n of Oregon;
E. C. Rector, Ohio Livestock Co-op. Association, Circleville, O.;
Roscoe Rich, Idaho Wool Growers' Association;
James R. Riggs, Sullivan, Indiana;
C. C. Roberts, Marion, O.;
Colonel George Grant Seaman, Taylorville, Ill.
J. B. Wilson, National Wool Growers' Association, Wyoming Wool Growers' Association, McKinley, Wyo.;
W. H. Settle, Indiana Farm Bureau Federation;
J. Blaine Shaum, Tarkio, Mo.;
Harry Snyder, Billings, Mont.;
E. B. Spiller, Sec'y, Texas & Southwestern Cattle Raisers Association, Fort Worth, Texas;
Sam G. Thompson, Center Junction, Iowa;
[fol. 1041] Dan Wallace, Editor, The Farmer, St. Paul, Minn.;
Senator Nate C. Warren, Member, Nebraska-Colorado Lamb Feeders Ass'n, Fort Collins, Colo.;
C. R. White, American Farm Bureau Federation;
J. D. Yaeger, Nevada State Farm Bureau Federation;
James West, V. P., Texas & Southwestern Cattle Raisers Association, Houston, Texas;
Hubbard Russell, Former president, California Cattlemen's Association, Former president, Western Marketing Association, Los Angeles, Calif.;
Senator C. H. Williams, President, Montana Wool Growers Association, Deer Lodge, Mont.;
Charles D. Carey, Chairman, National Live Stock and Meat Board, Cheyenne, Wyo.;
Senator Frank O. Horton, Former vice-president, Wyoming Stock Growers Association, Buffalo, Wyo.;

Charles Belden, Director, American National Live Stock Association, Pitchfork, Wyo.;

Field S. Bohart, Former president, Colorado Stock Growers Association, Director, American National Live Stock Association, Colorado Springs, Colo.;

J. H. Nason, V. P., Western South Dakota Stock Growers Association, Spearfish, S. D.;

E. Ray Cowden, V. P., Arizona Stock Growers Association, Director, American National Live Stock Association, Phoenix, Ariz.;

Harry Saxon, Former president, Arizona Stock Growers Association, Director, American National Live Stock Association, Wilcox, Ariz.;

Wayne Thornburg, Former vice-president, Arizona Stock Growers Association, Director, American National Live Stock Association, Phoenix, Ariz.;

[fol. 1042] P. S. Dorris, Former president, California Cattlemen's Association and of Western Marketing Association, Alturas, Calif.;

Ezra Baer, Director, American National Live Stock Association, Meeker, Colo.;

W. S. Whinnery, Former president, Colorado Stock Growers Association, Director, American National Live Stock Association, Lake City, Colo.;

W. J. Miller, Former president, Kansas Live Stock Association, Topeka, Kans.;

W. H. Donald, V. P., Montana Stock Growers Association, Melville, Mont.;

J. A. Donovan, Director of Montana Stock Growers Association and American National Live Stock Association, Butte, Mont.;

J. Terrett, V. P., Montana Stock Growers Association, Brandenburg, Mont.;

Dan Adamson, Former president, Nebraska Stock Growers Association, Director, American National Live Stock Association, Cody, Neb.;

George Christopher, Director, Nebraska Stock Growers Association, Valentine, Neb.;

A. R. Modisett, Director, Nebraska Stock Growers Association, Director, American National Live Stock Association, Rushville, Neb.;

Vernon Metcalf, Secretary, Nevada Land & Live Stock Association, Reno, Nevada;

E. B. Mitchell, President, Highland Hereford Association, Marfa, Texas;

T. B. Masterson, Director of Texas & Southwestern Cattle Raisers Association and of American National Live Stock Association, Truscott, Texas;

R. M. Faddis, Director, Wyoming Stock Growers Association, Director, American National Live Stock Association, Sheridan, Wyo.;

[fol. 1043] Caesar Kleberg, Assistant manager, King Ranch, Director, Texas & Southwestern Cattle Raisers Association, Kingsville, Texas;

Ed Springer, Director, New Mexico Stock Growers Association, Director, American National Live Stock Association, Springer, N. M.

[fol. 1044] As to public markets, it is further stipulated that producers of live stock and sellers of meat and meat products and other food products in the United States are now enabled to receive prompt, full, accurate, and unbiased reports of the demand for live stock, the prices prevailing, the character and kind of stock required, the receipts at and condition of the markets in which stock is sold and the markets in which meat and other food products are sold, together with information respecting trade and maket conditions. There does not exist control by the defendants or any of them of the media or channel through which this information is furnished, or any peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, the dissemination of information to the producer, or the sales and market conditions relating to meats and other finished products of live stock, or other foods. It is agreed that the character of market news service, its unbiased sources and impartial dissemination, is as heretofore given in evidence on this hearing by witnesses who have testified on those subjects.

[fol. 1045] It is further stipulated as follows:

That as to American Stores Corporation, in addition to data contained in Petitioners' Exhibit No. 69, the following are facts relating to that company's business: It owns and operates a plant at Hurlock, Maryland, for the canning of vegetables and fruits; a plant at Neillsville, Wisconsin, for evaporating milk; 8 bakeries in which are baked bread and other bakery products for sale to its retail stores, and 8

wholesale warehouses; the company deals in teas, coffees, fresh and cured meats, fresh and canned fruits and vegetables, and all kinds of groceries. The company added meats to its grocery business in 1924.

That as to First National Stores, Inc., in addition to facts relating to this company contained in Petitioners' Exhibits 51, 52, 53 and 69, it is agreed that the following are facts: This company as of the year 1929 had 7 warehouses, 4 bakeries, 1 candy factory, 1 coffee-roasting plant, 1 print shop, 2 central plants with manufacturing operations.

As to Safeway Stores, Inc., in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, these are facts: This company consists of a parent company and seventeen subsidiary corporations; its facilities as of 1930 include 15 bakeries, 44 warehouses, 3 creameries, 1 candy factory, 50 iceless refrigerator cars. It deals in groceries, fruits, vegetables, canned and fresh, meats, fish, breads and bakery supplies, milk, and a general line of food products.

That as to National Tea Company, in addition to the facts relating to this company set forth in Petitioners' Exhibit No. 69, facts relating to this company are: That it consists of a parent company and fifteen subsidiary corporations. It has a baking plant and a general plant and warehouses; of its stores, in 185 meats are sold; the company handles in addition to a general grocery line, fresh vegetables and fruits, butter, eggs, poultry, fish, bakery and other food products.

That as to the MacMarr Stores, in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, and in evidence heretofore received regarding this company's business, the following are facts: This com- [fol. 1046] pany consists of a parent corporation and twenty-seven subsidiary corporations; as of 1930 this company owned and operated 5 bakeries, 2 creameries, 6 wholesale grocery houses, 1 coffee and spice plant, 1 printing plant, 23 distributing warehouses; the company, through its stores and stands, sells groceries of all kinds, fresh fruits and vegetables, fresh and cured meats, fish, butter, eggs, cheese and poultry, milk, bakery products, teas, coffees, and other beverages. In addition to its stores the company operates 108 separate vegetable stands, 22 delicatessans, and 2 drug departments.

That as to the Pender Grocery Company, in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, this company, with headquarters at Norfolk, Va., and Southern Grocery Stores, Inc., with headquarters at Atlanta, Ga., have been combined under the control of National Food Products Corporation; these combined chains had at the end of 1929, 818 retail stores in which there were 246 meat market departments; combined they have 4 warehouses, 2 bakeries, 1 restaurant, in addition to their stores. Southern Grocery Stores, Inc., in 1920 owned 119 retail stores, and in that year its gross sales amounted to $6,759,571; in 1929 this company operated 408 retail stores and its gross sales amounted to $16,092,468; the combined 1929 sales of Pender Grocery Company and Southern Grocery Company, both now controlled by National Food Products Corporation, for the year 1929 amounted to $32,000,000; in the stores of these combined companies a general line of groceries, fresh fruits and vegetables, milk, butter, eggs, cheese, poultry, teas, coffees, and other beverages, and meats, fresh and cured are sold.

That Economy Grocery Stores is a corporation with headquarters at Boston, Mass., whose predecessor company in 1920 had 50 stores and which company in 1929 had 368; that its first reported sales for the year 1922 amounted to $2,393,033, and its sales in 1929 amounted to $10,561,097; that prior to 1925 it did not operate any meat markets in its stores; that in 1929 it had 82 meat departments in its stores; that among its facilities are 1 warehouse, and 1 refrigerating plant for meats and produce; that its invested capital, or net worth, in 1925 was $866,247, and its net earnings for that year were $203,272; that its invested capital, or net worth, for the year 1929 was $1,134,510, its [fol. 1047] net earnings for that year being $271,551; that its earnings on sales for the year 1929 amounted to 2.57% and its earnings on its invested capital for that year amounted to 24%; that this company does a general grocery and meat market business.

That the United States Stores Corporation was organized in 1922 and has its headquarters in New York, N. Y.; that it is a holding company owing all the capital stock of six subsidiaries; that the company has 881 grocery and meat stores located in twelve states; 4 warehouses and 2 bakeries; it does a general grocery and meat business.

That Daniels Reeves, Inc., in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, the facts are that its predecessor company owned and operated 202 stores in 1920, and that its total sales for the year 1920 amounted to $16,029,677; in 1925 its predecessor company had 518 stores, with total sales of $23,434,854; that this company operates grocery stores which do not handle fresh meats.

That in 1920 there were in the United States approximately 15,000 retail chain grocery stores, and that of this number approximately 1,200 contained fresh meat market departments; that in 1929 there were in the United States approximately 60,000 grocery chain stores in the United States, of which approximately 15,800 contained fresh meat market departments; that the estimated total annual sales of grocery chain stores in the United States in 1920 was $770,000,000, and in 1929 $3,500,000,000; that there are approximately 900 separate corporations in the United States, as of 1929, owing and operating the above-mentioned retail stores; and of the total number of grocery chain store companies, the seventy largest, with the names of the companies, the address of their principal headquarters, the total number of stores operated by each, and the total number of meat markets operated by such of them as have meat markets, are as shown in the following list.

[fol. 1048]

Number of Stores Operated by the Seventy Largest Grocery Chains in 1929

Name	Address	Stores	Markets
Great Atlantic & Pacific Tea Co.	New York, N. Y.	15,418	3,851
Kroger Gro. & Baking Co.	Cincinnati, Ohio	5,575	3,191
Safeway Stores, Inc.	Los Angeles, Cal.	2,660	1,366
American Stores	Philadelphia, Pa.	2,645	654
First National Stores, Inc.	Somerville, Mass.	2,575	192
National Tea Co.	Chicago, Ill.	1,604	185
Piggly Wiggly	Various Addresses	1,422*	471*
MacMarr Stores	Portland, Oregon	1,394	345
James Butler, Inc.	Long Island City, N. Y.	1,047	30
U. S. Stores Corp.	Pittsburgh, Pa.	945	56
National Groc. Co.	Jersey City, N. J.	805	.....
Thos. Roulston, Inc.	Brooklyn, N. Y.	702	.....
Daniel Reeves, Inc.	New York, N. Y.	698	.....
Grand Union Co.	New York, N. Y.	576	115
C. F. Smith Co.	Detoit, Mich.	525	.....
H. C. Bohack Co.	Brooklyn, N. Y.	504	230
D. Pender Gro. Co.	Norfolk, Va.	410	58
Southern Gro. Stores, Inc.	Atlanta, Ga.	404	186
Mutual Grocery Co.	Newark, N. J.	404	117
Flickinger	Buffalo, N. Y.	400	8
Clarence Saunders Stores	Memphis, Tenn.	400	175

Name	Address	Stores	Markets
Economy Gro. Stores	Boston, Mass.	364	82
National Dairy Prod. Company	(Sheffield Farms Co.). New York, N. Y.	350	.....
Eagle Gro. Co.	Jersey City, N. J.	346	.....
The Fisher Bros. Co.	Cleveland, Ohio	316	52
Jewel Tea Co.	Barrington, Ill.	287**	.....
The Market Basket	Geneva, N. Y.	277	25
R. Chain Stores	Detroit, Mich.	270	134
Hill Grocery Co.	Birmingham, Ala.	269	105
Standard Groc. Co.	Indianapolis, Ind.	253	68
Almar Stores	Philadelphia, Pa.	249	134
H. G. Hill Co.	Chattanooga, Tenn.	240	40
Keystone Gro. Tea Co.	Pittsburgh, Pa.	199	.....
Red Owl Stores, Inc.	Minneapolis, Minnesota	191	25
A. H. Phillips, Inc.	Springfield, Mass.	187	.....
Continental Chain Stores	Los Angeles, Calif.	180	30
Larkin Stores	Buffalo, N. Y.	178	.....
Crook Stores Co.	Baltimore, Md.	161	81
Danahy Faxon Stores, Inc.	Buffalo, N. Y.	160	100
Schaffer Stores Co., Inc.	Schenectady, N. Y.	150	45
The Public Food Stores	San Francisco, Cal.	148	14
Gristede Bros.	New York, N. Y.	147	.....
The Logan Bros. Co.	Bridgeport, Conn.	144	.....
E. E. Gray Co.	Boston, Mass.	135	23
Harts Self Serving Gro. Stores	Rochester, N. Y.	135	16
Great Eastern Stores Co.	Paterson, N. J.	127	.....
Victory Chain, Inc.	Norwich, N. Y.	125	3
The Fred W. Albreacht Co.	Akron, Ohio	123	51
[fol. 1049]			
Loblaw Grocerterias, Inc.	Buffalo, N. Y. and Chicago, Ill.	119	.....
H. G. Hill Stores, Inc.	New Orleans, La.	110	31
Weiss Pure Food Stores	Sunbury, Pa.	107	12
Council Oak Stores	Sioux City, Ia.	105	36
C. D. Kenney Co.	Baltimore, Md.	100	.....
Community Stores Co.	Worcester, Mass.	98	15
Winn & Lovett Gro. Co.	Jacksonville, Fla.	96	58
N. Winer & Co.	Boston, Mass.	91	.....
The Fair Stores Corp.	Little Rock, Ark.	86	.....
Better Service Stores, Inc.	Stamford, Conn.	85	85
L. Oppenheimer	New York, N. Y.	85	85
Oakley Economy Stores	Terre Haute, Ind.	83	48
The Shaffer Stores Co., Inc.	Altoona, Pa.	81	60
Youngstown Handy Service Stores	Youngstown, O.	80	.....
Handy Andy, Inc.	New York, N. Y.	80	36
Standard Dairy Stores	New York, N. Y.	78	.....
Busy Bee Stores	New York, N. Y.	75	.....
Union Supply Co.	Pittsburgh, Pa.	68	.....
Frye & Co.	Seattle, Wash.	64	64
Frank McDonald	Knoxville, Tenn.	63	.....
H. P. Hood & Sons Co.	Boston, Mass.	61	.....
South Georgia Gro. Co.	Quitman, Ga.	60	3
Total		48,699	12,791

*Only those not part of chains listed otherwise.

**On basis of 1929 sales of $16,844,110 divided by $58,808, equal to ordinary sales per store in chains.

[fol. 1050] That in addition to the chain grocery stores, with and without meat markets, referred to hereinbefore

(not, however, including so-called voluntary chain stores), in the year 1929, it is estimated that there were in operation in the United States 3632 meat chain stores, the principal business of which was the retailing of fresh and cured meats, in most of which stores there were also sold non-meat foodstuffs; 1017 chain bakery shops; 2075 chain restaurants and cafeterias and 523 chain hotels; that said chain meat stores, bakeries, restaurants, cafeterias and hotels had the chain characteristic of centralized purchasing.

That the facts and figures hereinbefore contained in this stipulation do not include chain store organizations operating drug, cigar, clothing, and shoe retail chain stores, but only include chain organizations dealing in food stuffs. It is stipulated however that the fact is that many chain retail drugstores handle and sell foodstuffs.

It is further stipulated that in addition to the facts regarding companies named in petitioners' Exhibit No. 70, set forth in that exhibit, the following are facts:

Drug, Inc., is a corporation organized March 2, 1928, succeeding to a predecessor company known as the United Drug Company; this Company, in 1920, operated 250 drugstores in the United States, and a number of drugstores in foreign countries. In 1929 the Company operated 520 stores in the United States, a larger number in foreign countries, and was affiliated with 10,000 additional drugstores in the United States operated by stockholder agents and known as the Rexall Stores.

Since the incorporation of Drug, Inc., in 1928, and the acquisition by it of the stock of the United Drug Company and Sterling Products, Inc., Drug, Inc., has acquired the following corporations during the years indicated:

1928—B. & R. Drugstores Co., Chicago;
1929—May Drugstores Corporation, Pittsburgh;
Life Savers, Inc.;
Wolff-Wilson Drug Co.;
Three-in-One Oil Co.;
Bristol-Myers Co.;
1930—Owl Drug Co., which operates a chain of 106 drugstores in western United States.

Drug, Inc., and its subsidiaries are engaged in the manu-[fol. 1051] facture and distribution of medicines, toilet articles, rubber goods, stationery, candies and other food products, druggists' sundries and similar goods. One of the subsidiaries of Drug, Inc., is the Ballardvale Pure Food Company, the charter of which permits it to engage in the manufacture and distribution of food products of every description. Another subsidiary is Schuhle's Pure Grape Juice Company, with plant located at Highland, N. Y., with an annual capacity of 325,000 cases of grape juice.

According to Standard Statistics Company, a financial reference service organization, Drug, Inc., estimates that 80 per cent of its net profits are from its manufacturing activities while 20 per cent are from its retail business. It considers its retail sales activites merely a necessary adjunct to the basic operation of the manufacture and distribution of its products. "Just as automobile tire manufacturers and crude oil refineries now market their products through their own service stations", so does Drug, Inc., market its articles through an extensive chain of its own drugstores.

Comparative statistics relating to Drug, Inc., for the years 1920 and 1929 are as follows:

	1920	Index	1929	Index
Net Income	3,797,997	100	17,013,543	448
Total Assets	82,076,826	100	158,031,737	193
Net Worth	51,304,288	100	94,310,192	184

It is further stipulated, in addition to facts shown in petitioners' Exhibit No. 70 relating to the companies named in that exhibit, that Schulte Retail Stores Corporation is a corporation which in 1920 owned and operated 157 retail stores in the United States and in 1928 owned and operated 312 stores; that from 1920 to 1923 this Company confined its activities to manufacturing cigars, pipes and tobacco, and operating a chain of stores through which it sold these articles; that in August, 1923, this Company acquired control of Park & Tilford, New York, and since has operated, in addition to cigar and tobacco stores, in the retail and wholesale grocery, perfume, candy and luncheonette business.

In 1927 Schulte Retail Stores Corporation acquired control of Huyler's of Delaware, Inc., a confectionery and [fol. 1052] luncheonette business with 51 retail stores.

In 1929 Schulte formed a new company called Huyler's Luncheonettes, Inc., to operate stores carrying smokers' articles, cards and novelties, ice cream, sandwiches, etc.

Comparative statistics for Schulte Retail Stores Corporation for the years 1921 and 1928 are as follows:

	1921	Index	1928	Index*
Sales	20,699,159	100	37,420,231	181
Net Income	1,017,712	100	4,360,322	429
Total Assets	7,749,864	100	34,027,407	439
Net Worth	5,170,757	100	29,593,501	572

*Index numbers with 1921 as the base year.

It is further stipulated that the averments of paragraphs 7, 8 and 10 of Chapter I of the amended petition of the defendants Swift & Company and others for modification of the decree of February 27, 1920, in this case, relating to the businesses referred to in said paragraphs, are in substantial accord with the facts relating thereto, and that the said averments may be considered by the Court with the same effect as if proved in substance by witnesses testifying to the facts so averred.

It is further stipulated that R. Bruce Brownlee, if called as a witness in this case, would testify that he is manager of the Research Department of the Standard Statistics Company of New York City; that said Company is engaged in the collecting and publishing of statistics relating to industries in the United States, and in furnishing a statistical service to banks, and commercial, industrial, railroad and public utility corporations, relating to the capital structure, earnings and business of corporations of all classes; that the compilations of said Standard Statistics Company are generally used and have become standard works of reference in the United States; that the said Standard Statistics Company has prepared, at the request of the petitioning defendants, four tables which, together with general explanation relating to said tables, are as follows, and that the same may be considered in evidence as though produced by said Brownlee as a witness and offered and received after having been testified to by him:

[fol. 1053] General Explanation

The four tabulations herein contained represent a carefully compiled record of all corporations for which reports of income for the years 1920 and 1929 are available.

These reports have been taken from Standard Corporation Records published by Standard Statistics Company of New York and are believed to be a complete list of domestic (U. S.) corporations.

In the group of food companies selection was made on the following basis:

Included All Domestic (U. S.) companies engaged in the manufacture or distribution of food or food products including those manufacturing vegetable oils and retail grocery and Food Stores.

Excluded Tobacco Mfrs., Distilleries, Stock Yards, Food Storage, Hotels, 5 and 10 cent Stores, Mail Order Houses, Restaurants, Soap companies.

In the group of all domestic (U. S.) companies with reported net income of $2,000,000 or over selection was made on the following basis:

Included All companies incorporated in the U. S. or its possessions and the Cuban Sugar Companies.

Excluded Investment Trusts, and all industrial companies holding the securities of other corporations.

The arrangement of these tables are as follows:

Food and Food Products Companies

Table I. All corporations engaged in the food or food products industry, including those producing vegetable oils but excluding those engaged in the manufacture of Tobacco, Distilleries, Stock Yards or Food Storage. Arranged in order of highest net income for 1929 to lowest for 1929.

Table II. Similar data for 1920 arranged in order of highest net income for 1920 to the lowest net income (or greatest deficit net income) for 1920. The same inclusions and exclusions have been made in compiling this list of food companies as in the above table.

[fol. 1054] All Industrial Companies

Table III. This list comprises all domestic (U. S.) concerns including the food companies, but excluding holding companies where the reported figures for such companies are not truly indicative of the operation of the companies held, and excluding also Investment Trusts. Arranged in order of highest net income for 1929 to lowest for 1929.

Table IV. Similar data for 1920. Arranged in order of highest net income for 1920 to lowest net income (or greatest deficit net income) for 1920. Compiled in the same manner as Table III.

Only such qualifying notes as were considered necessary to correct interpretation of these figures have been made.

For the source of these published reports, where Standard Statistics Company Corporation Records have been taken the symbol SCR has been designated; for Moody's Manuals "Moody's" is noted, and for Poor's Manual "Poor's" is noted.

September the Twenty-fourth, 1930.

[fol. 1055] Table I (immediately following) is a compilation of all companies engaged in the food or food products industry during the year 1929.

The 241 companies are arrayed (in Table I) in order from the highest net income to the lowest.

Totals—Table I

Number of companies	Year	Sales	Net Income
241	(1929)	.....	$445,061,209
134	(1929)	$6,210,756,048	235,023,495

[fol. 1056]

TABLE I

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
1	Great Atlantic & Pacific Tea Co.	$24,219,631	N. R.	2-28-30	SCR
2	National Dairy Products	24,919,934	$390,600,052	12-31-29	SCR
3	Procter and Gamble Company	22,210,318	192,352,590	6-30-30	SCR
4	National Biscuit Company	21,422,357	N. R.	12-31-29	SCR
5	General Foods Corporation	20,519,047	128,036,791	12-31-29	SCR
6	Borden Company (The)	20,403,725	328,466,989	12-31-29	SCR
7	Standard Brands	18,844,391	N. R.	12-31-29	SCR
8	United Fruit Company	17,802,992	N. R.	12-31-29	SCR
9	Corn Products Refining Company	15,647,687	N. R.	12-31-29	SCR
10	Swift and Company	13,076,815	1,000,000,000*	11- 2-29	SCR
11	Coca-Cola Company	12,758,276	39,260,813	12-31-29	SCR
12	Wrigley (Wm.) Jr., Company	11,608,708	N. R.	12-31-29	SCR
13	Armour and Company (Ill.)	9,810,518	900,000,000*	11- 2-29	SCR
14	Quaker Oats Company	8,735,205	N. R.	12-31-29	SCR
15	Gold Dust Corporation	7,586,963	N. R.	12-31-29	SCR
16	Hershey Chocolate Corporation	7,435,779	41,371,913	12-31-29	SCR
17	General Baking Company	7,239,221	N. R.	12-28-29	SCR
18	American Sugar Refining Company	6,928,794	N. R.	12-31-29	SCR
19	Continental Baking Corporation	6,671,101	N. R.	12-31-29	SCR
20	American Stores Company	6,594,822	143,346,157	12-31-29	SCR
21	Safeway Stores, Inc.	6,147,313	213,496,254	12-31-29	SCR
22	California Packing Corporation	6,024,349	N. R.	2-28-30	SCR

23	Kroger Grocery & Baking Company	5,919,096	286,611,214	12-31-29	SCR
**24	Nestle & Anglo-Swiss Cond. Milk Co	5,838,024	N. R.	12-31-29	SCR
25	Great Western Sugar Company	5,810,267	N. R.	2-28-30	SCR
26	Purity Bakeries Corporation	5,652,285	48,219,021	12-28-29	SCR
27	First National Stores, Inc	4,736,057	107,635,216	3-29-30	SCR
28	General Mills, Inc	4,609,101	163,071,661	5-31-30	SCR
29	Kraft-Phenix Cheese Company	3,514,840	86,393,675	12-31-29	SCR
30	Morrell (John) & Co., Inc	3,435,799	94,660,595	a11- 2-29	SCR
31	Hawaiian Pineapple Company, Ltd	3,166,308	15,201,487	12-31-29	SCR
32	Ward Baking Corporation	3,124,400	N. R.	12-28-29	SCR
33	National Sugar Refng. Co. of N. J	2,954,744	N. R.	12-31-29	SCR
34	Canada Dry Ginger Ale, Inc	2,835,293	10,624,629	12-31-29	SCR
35	Libby, McNeill & Libby	2,822,532	N. R.	3- 1-30	SCR
36	Pillsbury Flour Mills, Inc	2,814,564	N. R.	6-30-29	SCR
37	National Tea Company	2,731,267	90,210,077	12-31-29	SCR
38	Loose-Wiles Biscuit Company	2,714,865	N. R.	12-31-29	SCR
39	Beech-Nut Packing Company	2,693,749	23,732,089	12-31-29	SCR
40	Wesson Oil & Snowdrift Company	2,547,137	N. R.	8-31-29	SCR
41	Cudahy Packing Company (The)	2,512,850	267,960,185	11- 2-29	SCR
42	Beatrice Creamery Company	2,489,353	83,681,636	2-28-30	SCR
43	Wilson & Company, Inc	2,304,592	310,000,000	11- 2-29	SCR
44	South Porto Rico Sugar Company	2,278,966	15,234,506	9-30-29	SCR
45	United Biscuit Company of America	2,254,098	b9,347,834	12-31-29	SCR
46	Hormel (Geo. A.) & Company	2,217,397	40,047,231	10-26-29	SCR
47	MacMarr Stores, Inc	2,173,523	83,972,105	12-31-29	SCR
48	American Chicle Company	2,107,597	N. R.	12-31-29	SCR
49	Staley (A. E.) Mfg. Company	2,104,930	N. R.	12-31-29	SCR
50	United States Dairy Products Corp	1,950,299	24,713,016	12-31-29	SCR
[fol. 1057]					
51	Penick & Ford	1,882,441	N. R.	12-31-29	SCR
52	Cream of Wheat Corp	1,882,122	N. R.	12-31-29	SCR
53	Jewel Tea Co., Inc	1,691,302	16,844,110	12-28-29	SCR
54	International Milling Co	1,564,719	N. R.	8-31-29	SCR
55	American Maize-Products Co	1,548,440	N. R.	12-31-29	SCR

*—Approximate. a—13 months ended 11/2/29. b—Gross revenue. N. R.—Not reported.
SCR—Standard Corporation Records. **—Omitted from total.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
56	Archer-Daniels-Midland Co	1,453,408	N. R.	8-31-29	SCR
57	Waialua Agric. Co., Ltd	1,407,885	b3,950,618	12-31-29	SCR
58	Kellogg (Spencer) & Sons, Inc	1,297,730	N. R.	9-28-29	SCR
59	Mead Johnson & Company	1,278,473	N. R.	12-31-29	SCR
60	White Rock Mineral Springs Co	1,229,872	3,504,272	12-31-29	SCR
61	Cuba Company (The)	1,219,898	b26,721,053	6-30-29	SCR
62	Cuban American Sugar Co	1,204,356	b27,985,688	12-31-29	SCR
63	California & Hawaiian Sugar Ref. Corp	1,141,962	N. R.	11-30-29	SCR
64	Godchaux Sugars, Inc	1,132,148	N. R.	1-31-30	SCR
65	Reeves (Daniel), Inc	1,128,350	33,766,924	12-31-29	SCR
66	Western Dairy Products Co	1,104,965	26,047,401	12-31-29	SCR
67	Pacific American Fisheries	1,086,578	N. R.	12-31-29	SCR
68	Fairmont Creamery Co. (Del.)	1,079,287	47,746,917	12-31-29	SCR
69	Golden State Milk Products Co	1,062,313	34,349,414	2-28-30	SCR
70	National Candy Company	1,057,433	N. R.	12-31-29	SCR
71	American Fruit Growers, Inc	1,028,018	47,883,569	12-31-29	SCR
72	Grand Union Company	1,021,385	36,943,112	12-28-29	SCR
73	Western Maryland Dairy Corp	973,118	1,233,894	12-31-29	SCR
74	Ewa Plantation Company	933,386	N. R.	12-31-29	SCR
75	Earl Fruit Co	915,091	N. R.	12-31-29	SCR
76	Bohack (H. C.) Co., Inc	900,337	28,865,869	2- 1-30	SCR
77	Interstate Bakeries Corp	836,252	13,916,797	12-31-29	SCR
78	Calamba Sugar Estate	832,599	2,271,429	9-30-29	SCR
79	Seeman Bros., Inc	816,769	3,650,930	6-30-29	SCR
80	Clark (D. L.) Company	c796,070	4,700,244	12-31-29	SCR
81	Alaska Packers Association	749,146	N. R.	12-31-29	SCR
82	International Products Corp	724,681	N. R.	12-31-29	SCR
83	International Salt Co	687,767	N. R.	12-31-29	SCR
84	Pet Milk Company	660,936	26,896,786	12-31-29	SCR
85	Gerrard (S. A.) Co	653,267	N. R.	11-30-29	SCR
86	Nehi Corporation	647,672	3,714,210	12-31-29	SCR

87	Hires (Chas. E.) Company, The	619,820	4,083,726	9-30-29	SCR
88	Globe Grain & Milling Co	618,585	N. R.	6-30-29	SCR
89	Hawaiian Sugar Company	611,747	N. R.	12-31-29	SCR
90	American Beverage Corp	564,256	3,095,110	e11-30-29	SCR
91	Savannah Sugar Refining Corp	556,410	N. R.	12-31-29	SCR
92	American Bakeries Corp	553,866	7,861,993	12-31-29	SCR
93	United Milk Products Corp	526,555	N. R.	12-31-29	SCR
94	Brach (E. J.) & Sons	524,408	6,543,298	12-31-29	SCR
95	Pacific Coast Biscuit Co	522,676	N. R.	12-31-29	SCR
96	Pie Bakeries of America, Inc	502,483	N. R.	12-28-29	SCR
97	Langendorf United Bakeries, Inc	501,875	5,271,112	6-30-29	SCR
98	Bunte Bros	500,694	6,924,202	12-31-29	SCR
99	Rath Packing Co	495,005	33,932,253	11- 2-29	SCR
100	San Carlos Milling Co., Ltd	490,486	953,245	12-31-29	SCR

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101	U. S. Stores Corporation	474,751	28,753,707	12-31-29	SCR
102	Fanny Farmer Candy Shops, Inc	444,120	4,068,258	12-31-29	SCR
103	Welch Grape Juice Company (The)	443,823	N. R.	8-31-29	SCR
104	Onomea Sugar Company	435,528	2,225,455	12-31-29	SCR
105	Commander Milling Company	417,199	N. R.	7-31-29	SCR
106	Hathaway Bakeries, Inc	416,844	7,778,241	12-31-29	SCR
107	Brennan Packing Company	397,921	N. R.	11-30-29	SCR
108	Liberty Baking Corporation	393,963	N. R.	12-30-29	SCR
109	Corno Mills Company	385,348	N. R.	12-31-29	SCR
110	Wheatsworth, Inc	385,146	N. R.	12-31-29	SCR
111	Stahl-Meyer, Inc	381,620	9,418,587	12-28-29	SCR
112	Schulze Baking Company	371,718	N. R.	12-28-29	SCR
113	American Dairies, Inc	368,445	13,524,849	3-31-30	SCR
114	Albers Bros. Milling Company	359,940	N. R.	6-30-29	SCR
115	Commander-Larabee Corporation	359,446	42,646,812	7-31-29	SCR
116	Loudon Packing Company (The)	356,940	N. R.	12-31-29	SCR
117	Western Grocer Company	353,509	N. R.	6-30-30	SCR
118	Consolidated Dairy Products Co	f341,850	1,646,043	12-31-29	SCR
119	Economy Grocery Stores Corp	336,046	13,827,429	6-30-30	SCR

b—Gross Revenue. c—Before Federal Taxes. e—11 Months Ended 11/30/29. N. R.—Not Reported.
SCR—Standard Corporation Records.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
120	Flour Mills of America, Inc	$326,675	N. R.	5-31-30	SCR
121	American Beet Sugar Company	320,654	N. R.	3-31-30	SCR
122	Hunt Brothers Packing Company	319,974	8,375,678	2-28-30	SCR
123	National Baking Company	316,488	N. R.	6-30-29	SCR
124	Trunz Pork Stores, Inc	315,591	4,976,480	12-31-29	SCR
125	Francisco Sugar Company	311,905	5,457,163	6-30-29	SCR
126	Central Aguirre Association	300,282	5,661,709	7-31-29	SCR
127	Wailuku Sugar Company	295,227	1,605,408	12-31-29	SCR
128	Grocery Store Products, Inc	294,448	N. R.	4-30-30	SCR
129	Huston (Tom) Peanut Company	292,663	2,041,155	8-31-29	SCR
130	Pender (David) Grocery Co	287,715	15,920,689	12-31-29	SCR
131	Central Oklahoma Service Company	f284,463	N. R.	12-31-29	SCR
132	Honolulu Plantation Company	279,299	3,238,809	12-31-29	SCR
133	Gamble-Robinson Company	279,252	18,006,740	12-31-29	SCR
134	Miller & Hart, Inc	266,406	10,507,344	10-31-29	SCR
135	Manati Sugar Company	259,028	N. R.	10-31-29	SCR
136	Orange Crush Company	257,829	1,864,699	12-31-29	SCR
137	Potrero Sugar Company	255,592	2,291,136	10-31-29	SCR
138	American Products Company	249,069	N. R.	9-30-29	SCR
139	Standard Fruit & Steamship Co	248,313	N. R.	12-31-29	SCR
140	Dold (Jacob) Packing Company	248,202	52,909,278	10-31-29	SCR
141	Capital City Products Company	248,139	7,133,290	12-31-29	SCR
142	Minnesota Valley Canning Co	247,442	N. R.	3-13-30	SCR
143	Young (J. S.) Company	244,969	N. R.	12-31-29	SCR
144	Federal Bake Shops, Inc	240,809	4,489,607	12-31-29	SCR
145	Booth (F. E.) Company, Inc	236,868	4,277,129	11-30-29	SCR
146	Booth Fisheries Company	225,925	N. R.	5- 3-30	SCR
147	Manischewitz (B) Company	223,872	N. R.	7-31-29	SCR

148	Edwards (The William) Company	222,640	10,856,255	6-30-30	SCR
149	Eskimo Pie Corporation	220,769	N. R.	12-31-29	SCR
150	Austin, Nichols & Company, Inc	212,302	N. R.	4-30-30	SCR
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151	Crosse & Blackwell, Inc	203,579	N. R.	12-31-29	SCR
152	National Food Products Corp	202,662	N. R.	12-31-29	SCR
153	Nuckolls Packing Company	202,380	N. R.	12-31-29	SCR
154	Kahn's (E.) Sons Company	201,561	$17,801,589	12-31-29	SCR
155	Columbia River Packers Assoc., Inc	200,803	2,897,456	12-31-29	SCR
156	Foremost Dairy Products, Inc	g200,674	4,847,457	3-31-30	SCR
157	Burger Brothers	195,094	N. R.	9-30-29	SCR
158	Holly Sugar Corporation	186,505	N. R.	3-31-29	SCR
159	East Side Packing Company	182,545	21,919,491	12-28-29	SCR
160	Pepeekeo Sugar Company	181,808	984,704	12-31-29	SCR
161	French Bros.—Bauer Co. (The)	c176,113	7,565,729	12-31-29	SCR
162	Muller Bakeries, Inc	168,480	1,910,417	10-31-29	SCR
163	Cespedes Sugar Company	164,629	1,893,853	10-31-29	SCR
164	North American Creameries, Inc	162,449	N. R.	12-31-29	SCR
165	Van De Kamp's Holland Dutch Bak	158,086	2,642,845	12-31-29	SCR
166	Harbaur Co. (The)	157,725	N. R.	6-29-29	SCR
167	Liberty Dairy Products Corp	156,804	4,152,513	4-30-28	SCR
168	National Fruit Product Co	155,628	1,553,349	8-31-29	SCR
169	Fink (A.) & Sons, Inc	c154,246	6,720,997	12-31-29	SCR
170	Louisiana State Rice Milling Co	g151,010	6,366,113	4-30-30	SCR
171	Larabee Flour Mills Company	c150,183	N. R.	6-30-29	SCR
172	Home Dairy Co., Inc	149,374	2,013,755	12-31-29	SCR
173	Mayer (Oscar) & Company, Inc	145,647	N. R.	11-30-29	SCR
174	Winn & Lovett Grocery Company	139,209	6,092,003	12-28-29	SCR
175	Lyons-Magnus, Inc	137,488	N. R.	3-31-30	SCR
176	Gobel (Adolf) Inc	131,298	46,032,417	12-28-29	SCR
177	Knudsen Creamery Company	129,403	2,218,278	3-31-30	SCR
178	Ivanhoe Foods, Inc	126,498	1,077,057	12-31-29	SCR
179	Williams (R. C.) & Co., Inc	125,238	N. R.	4-30-30	SCR
180	Alaska Pacific Salmon Corp	124,937	N. R.	h12-31-29	SCR
181	Chapman's Ice Cream Company	123,650	657,916	12-31-29	SCR

b—Gross Revenue. c—Before Federal Taxes. g—Before depreciation. h—11 months ended December 31, 1929.
SCR—Standard Corporation Records. N. R.—Not Reported. f—Before Depreciation and Federal Taxes.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
182	Sweets Company of America, Inc	$121,748	$1,245,261	12-31-29	SCR
183	Hutchinson Sugar Plantation Co	118,820	1,084,433	12-31-29	SCR
184	Hershey Creamery Company	117,333	5,355,426	12-31-29	SCR
185	Van Camp Milk Company	116,347	N. R.	12-31-29	SCR
186	Carstens Packing Company	112,532	11,274,145	9-30-29	SCR
187	Chapman Ice Cream Co. of Calif	110,163	657,916	12-31-29	SCR
188	Churngold Corporation (The)	107,569	N. R.	12-31-29	SCR
189	Columbia Baking Company	106,611	N. R.	12-28-29	SCR
190	Atlantic Macaroni Company	104,674	N. R.	12-31-29	SCR
191	Sieloff Packing Company	99,644	N. R.	3-31-30	SCR
192	Francisco Sugar Company	98,043	b4,653,924	6-30-30	SCR
193	Zoller (Wm.) Company	c87,343	5,478,569	12-31-29	SCR
194	Bay State Fishing Company	81,716	5,758,908	4-30-30	SCR
195	Columbus Packing Company	76,299	16,785,461	11- 2-29	SCR
196	Honomu Sugar Company	75,646	b755,520	12-31-29	SCR
197	Carpel Corporation	73,013	N. R.	12-31-29	SCR
198	Snider Packing Corp	70,081	11,050,405	1-31-30	SCR
199	National Licorice Company	68,796	N. R.	12-31-29	SCR
200	Haytian Corporation of America	68,411	b1,850,766	6-30-29	SCR
[fol. 1060]					
201	Rocky Mountain Packing Corp	68,045	1,614,998	12-31-29	SCR
202	Paauhau Sugar Plantation Co	64,807	1,035,142	12-31-29	SCR
203	American Candy Company	64,057	1,250,550	12-31-29	SCR
204	General Candy Corporation	62,883	N. R.	12-31-29	SCR
205	Stewart Curtis Packers, Inc	62,004	N. R.	5-31-29	SCR
206	Sullivan Packing Company	51,449	9,650,839	11- 2-29	SCR
207	Blayney-Murphy Company	48,679	N. R.	11- 2-29	SCR
208	Citizens Wholesale Supply Co	46,170	1,217,617	12-31-29	SCR
209	Cloverland Dairy Products Co	41,482	1,792,419	12-31-29	SCR

210	Clarence Saunders Stores, Inc	41,107	5,933,671	11–3–28	SCR
211	Nunnally Company (The)	40,502	1,775,392	12–31–29	SCR
212	Punta Alegre Sugar Company	40,269	i9,560,579	9–30–29	SCR
213	Schutter-Johnson Candy Company	36,929	N. R.	12–31–28	SCR
214	Horlucks, Inc	32,294	N. R.	12–31–29	SCR
215	Annapolis Dairy Products Co	j31,438	N. R.	10–31–28	SCR
216	Shasta Water Company	30,345	223,550	6–30–29	SCR
217	American Caramel Company	c25,296	1,154,906	12–31–29	SCR
218	Meyer Dairy Corporation	23,156	516,124	12–31–29	SCR
219	Traders Oil Mill Company	19,714	N. R.	6–30–29	SCR
220	Rigney and Company	3,067	N. R.	12–31–29	SCR
221	Cimarrones Fruit Company	d6,096	314,361	12–31–29	SCR
222	Mutual Creamery Company (Utah)	d32,704	N. R.	2–28–30	SCR
223	Pittsburgh Brewing Company	d41,544	2,173,433	10–31–29	SCR
224	New Niquero Sugar Company	d50,396	N. R.	7–31–29	SCR
225	Southern Grocery Stores, Inc	d57,254	16,092,468	12–31–29	SCR
226	Union Sugar Company	d62,659	N. R.	12–31–29	SCR
227	Southern Stores Corporation	d79,102	N. R.	12–31–29	SCR
228	Hammond, Standish & Company	d94,849	12,323,117	11–2–29	SCR
229	Independent Brewing Co. (of Pitts.)	d115,121	N. R.	9–30–29	SCR
230	Crook (J. W.) Stores Company	d122,203	5,989,531	12–31–29	SCR
231	Caracas Sugar Company	d133,317	N. R.	9–30–29	SCR
232	United Grape Products, Inc	d208,987	1,986,433	8–31–29	SCR
233	Utah-Idaho Sugar Company	d284,826	11,199,135	2–28–30	SCR
234	United Porto Rican Sugar Co	d394,500	N. R.	6–30–29	SCR
235	Michigan Sugar Company	d441,797	N. R.	6–30–30	SCR
236	St. Louis Independent Packing Co	d618,741	N. R.	10–31–27	SCR
237	Camaguey Sugar Company	d720–422	3,934,783	9–30–29	SCR
238	Fajardo Sugar Co. of Porto Rico	d720,881	N. R.	7–31–29	SCR
239	Cuban Cane Products Co., Inc	d805,832	24,903,525	9–30–29	SCR
240	Atlantic Fruit & Sugar Company	d821,388	b9,406,940	12–31–29	SCR
241	Warner Sugar Corporation	d1,042,642	N. R.	12–31–29	SCR
242	Cuban Dominican Sugar Corp	d1,337,582	N. R.	9–30–29	SCR

b—Gross Revenue. c—Before Federal Taxes. d—Deficit. i—Total Operating Revenue. j—Before Interest. N. R.—Not Reported.
SCR—Standard Corporation Records.

[fol. 1061] Table II (immediately following) is a compilation of all companies engaged in the food or food products industry during the year 1920 as determined from the companies in Table I.

The 91 companies are arrayed in (Table II) in order from the highest net income to the lowest.

Totals—Table II

Number of companies	Year	Sales	Net income
91	(1920)	.....	$144,196,353
33	(1920)	$2,872,871,698	22,414,560

[fol. 1062]

TABLE II

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
1	United Fruit Company	$29,008,307	N. R.	12-31-20	SCR
2	Corn Products Refining Co	12,591,480	N. R.	12-31-20	SCR
3	Cuba Cane Sugar	12,344,135	N. R.	9-30-20	SCR
4	Cuban American Sugar Co	12,186,897	b$90,413,179	12-31-20	SCR
5	Central Aguirre Sugar Co	9,178,491	N. R.	7-31-20	SCR
6	National Biscuit Company	5,543,120	N. R.	12-31-20	SCR
7	Fajardo Sugar Co. of Porto Rico	5,456,917	N. R.	7-31-20	Poor's
8	Armour and Company (Ill.)	5,319,974	N. R.	10-30-20	Poor's
9	South Porto Rico Sugar Co	5,278,277	22,250,851	9-30-20	SCR
10	Swift & Company	5,170,383	*1,100,000,000	11- 1-20	SCR
11	Ewa Plantation Company	5,119,898	N. R.	12-31-20	Poor's
12	American Sugar Refining Co	4,404,916	N. R.	12-31-20	SCR
13	Great Western Sugar Co	4,264,171	N. R.	2-28-21	SCR
14	California Packing Corp.	4,253,015	N. R.	2-28-21	Poor's
15	Waialua Agric. Co., Ltd	3,504,722	N. R.	12-31-20	Poor's
16	Fleischmann Co. (The)	3,409,479	34,320,910	12-31-20	Poor's
17	Wrigley (Wm.) Jr., Co	3,293,748	N. R.	12-31-20	SCR
18	Libby, McNeill & Libby	2,921,033	N. R.	a3- 5-21	Poor's
19	Borden Company (The)	2,789,621	120,293,573	12-31-29	SCR

20	Manati Sugar Company	2,668,131	N. R.	10–31–20	SCR
21	Hawaiian Sugar Company	2,608,953	N. R.	12–31–20	Moody's
22	Honolulu Plantation Co.	2,650,919	N. R.	12–31–20	Poor's
23	Great Atlantic & Pacific Tea Co.	2,437,297	235,302,887	2–28–21	Moody's
24	American Stores Company	2,249,454	103,059,303	12–31–20	Poor's
25	Coca-Cola Company	2,139,166	32,341,429	12–31–20	SCR
26	New Niquero Sugar Company	1,917,392	N. R.	7–31–20	Poor's
27	Godchaux Sugars, Inc.	1,894,079	N. R.	6–30–20	Moody's
28	Wailuku Sugar Company	1,627,434	N. R.	12–31–20	Moody's
29	National Candy Company	1,528,100	N. R.	12–31–20	Poor's
30	Utah-Idaho Sugar Co.	1,417,840	12,284,053	2–28–21	Moody's
31	Francisco Sugar Co.	c1,365,309	N. R.	6–30–21	Poor's
32	Hawaiian Pineapple Co., Ltd.	1,364,229	N. R.	12–31–20	Poor's
33	San Carlos Milling Co., Ltd.	1,280,668	N. R.	12–31–20	Moody's
34	Globe Grain & Milling Co.	1,249,110	N. R.	6–30–20	Poor's
35	Onomea Sugar Company	1,207,051	N. R.	12–31–20	Poor's
36	General Baking Company	1,086,226	N. R.	12–31–20	Poor's
37	Atlantic Fruit & Sugar Company	1,058,619	N. R.	12–31–20	Poor's
38	Cuba Company (The)	1,057,957	N. R.	6–30–20	Poor's
39	American Fruit Growers, Inc.	985,427	N. R.	e6–30–20	Moody '22
40	Loose-Wiles Biscuit Co.	945,793	N. R.	12–31–20	SCR
41	International Salt Co.	892,792	N. R.	12–31–20	Poor's
42	Beatrice Creamery Co.	862,955	N. R.	12–31–20	Poor's
43	Penick & Ford	838,339	N. R.	f6–30–20	Moody's
44	Warner Sugar Corp.	c810,317	113,049,828	12–31–20	Moody's
45	Fairmont Creamery Co. (Del.)	804,863	N. R.	12–31–20	Moody's
46	American Chicle Company	792,091	N. R.	12–31–20	SCR
47	Union Sugar Company	752,205	N. R.	12–31–20	SCR
48	Pepeekeo Sugar Company	696,651	N. R.	12–31–20	Poor's
49	Kroger Grocery & Baking Co.	672,709	N. R.	12–31–20	Poor's
50	Staley (A. E.) Mfg. Co.	g629,478	15,729,441	12–31–20	Moody's

*—Approximate. a—10 months ended 3–5–21. b—Gross revenue. c—Before depreciation and taxes.
e—13 months ended 6–30–20. f—6 months ended 6–30–20. g—Estimated. N. R.—Not reported. SCR—Standard Corporation Records.

TABLE II—Continued

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No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
51	Cudahy Packing Co. (The)	$624,288	$288,802,000	10-31-20	SCR
52	International Milling Co	575,893	N. R.	8-31-20	Poors
53	Bunte Brothers	573,797	7,801,590	12-31-20	Poors '24
54	Honomu Sugar Company	556,813	N. R.	12-31-20	Poors
55	Jones Brothers Tea Company	495,333	22,743,098	12-31-20	Poors '24
56	Beech-Nut Packing Company	495,241	11,700,925	12-31-20	SCR
57	Hutchinson Sugar Plantation Co	452,104	N. R.	12-31-20	Poors
58	Austin, Nichols & Co., Inc	391,027	N. R.	1-31-21	Poors
59	Pasuhau Sugar Plantation Co	362,858	b2,358,149	12-31-20	SCR
60	Francisco Sugar Co	339,484	N. R.	6-30-21	Poors
61	Nunnally Company (The)	269,967	2,868,899	12-31-20	Poors
62	Young (J. S.) Co	197,167	N. R.	12-31-20	SCR
63	Louisiana State Rice Milling Co., Inc	190,032	N. R.	6-30-21	Poors
64	American Candy Co	167,400	2,348,121	12-31-20	Poors
65	National Tea Company	166,739	18,705,980	12-31-20	SCR
66	Booth (F. E.) Co., Inc	79,841	N. R.	12-31-20	Poors
67	Dold (Jacob) Packing Co	79,019	b56,512,175	10-30-20	Poors
68	Nuckolls Packing Co	44,152	3,234,000	12-31-20	Poors
69	Citizens Wholesale Supply Co	42,067	1,481,530	12-31-20	Poors
70	Mayer (Oscar) & Co., Inc	10,202	11,187,146	12-31-20	Poors
71	Larabee Flour Mills Co	d86,193	N. R.	6-30-21	Poors
72	American Beet Sugar Co	d99,662i	11,549,716	3-31-21	SCR
73	Hunt Brothers Packing Co	d115,811	5,318,752	12-31-20	Poors
74	Brennan Packing Co	d213,607	9,630,528	12-31-20	Poors
75	Sweets Co. of America, Inc	d240,270	689,367	12-31-20	Moodys
76	Snider Packing Corp	d260,236	11,531,017	12-31-20	SCR
77	Cornô Mills Company	d264,413	N. R.	11-30-20	Poors
78	Haytian Corp. of America	d357,349	N. R.	6-30-20	Poors
79	Western Grocer Co	d390,151	26,668,215	12-31-20	Moodys
80	Hershey Chocolate Corp	d395,739	N. R.	12-31-20	Poors

81	Michigan Sugar Co.	d423,319	N. R.	6-30-21	Poors
82	Pittsburgh Brewing Co.	d595,317	1,858,288	10-31-20	Poors
83	Caracas Sugar Co.	d845,891	N. R.	6-30-20	Moodys
84	Booth Fisheries Co.	d916,722	N. R.	12-31-20	Poors
85	Wilson & Co., Inc.	d940,850	370,000,000	12-31-20	SCR
86	Independent Brewing Co. (Pitts.)	d1,053,826	N. R.	9-30-20	SCR
87	Punta Alegre Sugar Co.	d2,068,867	j6,817,021	5-31-21	SCR
88	Jewel Tea Co., Inc.	d2,183,506	N. R.	12-31-20	Poors
89	Quaker Oats Co.	d5,824,925	N. R.	12-31-20	Poors
90	Wesson Oil & Snowdrift Co.	d8,660,614	N. R.	5-31-21	Moodys
91	Procter & Gamble Co.	d14,509,941	120,019,727	6-30-21	Moodys

b—Gross revenue. d—Deficit. i—After appropriation for depreciation and additions. j—Total operating revenue.
N. R.—Not reported. SCR—Standard Corporation Records.

[fol. 1064] Table III (immediately following) is a compilation of all domestic (U. S.) companies that reported a net income of $2,000,000 or over for the year 1929.

The 504 companies are arrayed (in Table III) in order from the highest net income to the lowest.

Totals—Table III

Number of companies	Year	Sales	Net income
504	(1929)	.....	$5,871,216,278
259	(1929)	$29,486,485,814	3,687,866,319

[fol. 1065]

TABLE III

No.	Name of Company	1929 Net income	1929 Sales	Year ending	Source of data
1	General Motors Corp.	$247,317,743	$1,504,404,472	12-31-29	SCR
2	American Tel. & Tel. Co.	217,104,872	1,070,794,449	12-31-29	SCR
3	U. S. Steel Corp.	197,592,060	1,493,505,486	12-31-29	SCR
4	Standard Oil (N. J.)	120,912,794	1,523,386,465	12-31-29	SCR
5	Pennsylvania R. R. Co.	101,378,518	a682,702,93	12-31-29	SCR
6	Standard Oil (Ind.)	78,499,754	N. R.	12-31-29	SCR
7	N. Y. Central R. R. Co.	78,277,292	a396,917,259	12-31-29	SCR
8	DuPont de Nemours	78,171,730	N. R.	12-31-29	SCR
9	Anaconda Copper Mining Co.	70,317,739	b305,751,876	12-31-29	SCR
10	General Electric Company	67,289,880	415,330,094	12-31-29	SCR
11	Cons. Gas Co. of N. Y.	65,969,506	222,524,048	12-31-29	SCR
12	Atchison, Topeka & Santa Fe Ry. Co.	61,036,804	a267,189,178	12-31-29	SCR
13	Kennecott Copper Corp.	e52,066,365	N. R.	12-31-29	SCR
14	Union Pacific R. R. Co.	49,256,043	a217,356,593	12-31-29	SCR
15	Cities Service Co.	48,423,519	185,851,054	12-31-29	SCR
16	Texas Corp.	48,318,072	N. R.	12-31-29	SCR
17	Southern Pacific Co.	47,434,930	a310,969,138	12-31-29	SCR
18	Standard Oil (Calif.)	46,633,490	N. R.	12-31-29	SCR
19	American Superpower Corp.	44,782,323	N. R.	12-31-29	SCR
20	Gulf Oil Corp. of Penn.	44,489,686	b272,413,239	12-31-29	SCR

21	Bethlehem Steel Corp.	42,242,980	342,516,207	12-31-29	SCR
22	Norfolk & Western Ry. Co.	41,786,461	a117,631,752	12-31-29	SCR
23	Standard Oil (N. Y.)	38,750,849	N. R.	12-31-29	SCR
24	International Harvester Co.	36,779,998	N. R.	12-31-29	SCR
25	Vacuum Oil Company	35,767,627	N. R.	12-31-29	SCR
26	Woolworth (F. W.) & Co.	35,664,252	303,047,172	12-31-29	SCR
27	Union Carbide & Carbon Corp.	35,427,024	N. R.	12-31-29	SCR
28	Commonwealth & Southern Corp.	33,297,552	151,404,677	11-30-29	SCR
29	Humble Oil & Refining Co.	32,535,081	N. R.	12-31-29	SCR
30	United Gas Improvement Co.	32,519,182	102,228,411	12-31-29	SCR
31	Electric Bond & Share	32,511,823	42,410,701	12-31-29	SCR
32	Reynolds (R. J.) Tobacco Co.	32,210,521	N. R.	12-31-29	SCR
33	Chesapeake & Ohio Ry. Co.	32,192,416	a129,779,115	12-31-29	SCR
34	Columbia Gas & Electric Corp.	32,161,139	b115,150,313	12-31-29	SCR
35	Allied Chemical & Dye Corp.	30,198,523	N. R.	12-31-29	SCR
36	American Tobacco Co.	30,182,669	N. R.	12-31-29	SCR
37	Sears, Roebuck & Co.	30,057,652	403,472,008	12-31-29	SCR
38	Chicago, Burlington & Quincy R. R. Co.	29,576,538	a162,409,924	12-31-29	SCR
39	North American Company	28,806,824	147,779,869	12-31-29	SCR
40	Baltimore & Ohio R. R. Co.	28,767,908	N. R.	12-31-29	SCR
41	Public Service Elect. & Gas Co.	28,547,413	b 94,286,063	12-31-29	SCR
42	Public Service Corp. of N. J.	28,518,831	N. R.	12-31-29	SCR
43	New York Edison Co.	27,574,081	N. R.	12-31-29	SCR
44	Westinghouse Electric & Mfg. Co.	27,062,611	216,364,589	12-31-29	SCR
45	Great Atlantic & Pacific Tea Co.	26,219,631	N. R.	2-28-30	SCR
46	Great Northern Ry. Co.	25,688,551	a125,932,808	12-31-29	SCR
47	Aluminum Company of America	25,318,050	N. R.	12-31-29	SCR
48	Packard Motor Car Co.	25,183,256	107,542,163	8-31-29	SCR
49	National Dairy Products	24,919,934	390,600,052	12-31-29	SCR
50	American & Foreign Power Co., Inc.	24,756,305	N. R.	12-31-29	SCR
[fol. 1066]					
51	Singer Mfg. Co.	23,723,802	N. R.	12-31-29	SCR
52	U. S. Electric Power Corp.	23,169,345	b172,762,748	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.
a—Total operating revenue. b.—Gross revenue. e—Before depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
53	Prairie Pipe Line Company	$22,800,453	b39,993,429	12-31-29	SCR
54	American Can Company	22,724,802	N. R.	12-31-29	SCR
55	Procter & Gamble Company	22,210,318	192,352,590	6-30-30	SCR
56	Liggett & Myers Tobacco Co.	22,017,128	N. R.	12-31-29	SCR
57	Eastman Kodak Company	22,004,915	N. R.	12-28-29	SCR
58	Chrysler Corporation	21,902,168	375,033,455	12-31-29	SCR
59	N. Y., N. H. & Hartford R. R.	21,838,556	a142,458,670	12-31-29	SCR
60	American Smelting & Refng. Co.	21,831,583	N. R.	12-31-29	SCR
61	Chile Copper Company	e21,821,932	N. R.	12-31-29	SCR
62	Northern Pacific Ry. Co.	21,808,309	a96,522,348	12-31-29	SCR
63	Middle West Utilities Co.	21,656,525	162,337,274	12-31-29	SCR
64	Youngstown Sheet & Tube Co.	21,564,174	162,826,640	12-31-29	SCR
65	Curtis Publishing Company (The)	21,534,265	N. R.	12-31-29	SCR
66	National Biscuit Company	21,422,357	N. R.	12-31-29	SCR
67	American Gas & Electric Co.	21,171,172	N. R.	12-31-29	SCR
68	Jones & Laughlin Steel Corp.	20,848,748	N. R.	12-31-29	SCR
69	International Match Corp.	20,623,530	N. R.	12-31-29	SCR
70	Republic Steel Corp.	20,526,813	N. R.	12-31-29	SCR
71	General Foods Corporation	20,519,047	128,036,791	12-31-29	SCR
72	International Tel. & Tel. Corp.	20,486,326	100,340,590	12-31-29	SCR
73	Borden Company (The)	20,403,725	328,466,989	12-31-29	SCR
74	American Radiator & Stan. San.	20,012,171	144,582,874	12-31-29	SCR
75	Goodyear Tire & Rubber Co.	19,864,374	256,227,067	12-31-29	SCR
76	Michigan Central R. R. Co.	19,335,114	N. R.	12-31-29	SCR
77	American Power & Light Co.	19,269,239	88,406,792	3-31-30	SCR
78	Philadelphia Electric Company	19,054,150	b61,825,069	12-31-29	SCR
79	North American Edison Company	18,812,911	b100,336,561	12-31-29	SCR
80	Standard Brands	18,344,391	N. R.	12-31-29	SCR
81	Southern Railway Co.	18,128,788	a143,183,948	12-31-29	SCR
82	Nash Motors Company	18,013,781	N. R.	11-30-29	SCR

83	United Fruit Company	17,802,992	N. R.	12-31-29	SCR
84	Pullman, Inc.	17,678,698	N. R.	12-31-29	SCR
85	Shell Union Oil Corporation	17,573,249	N. R.	12-31-29	SCR
86	Nevada Cons. Copper Co.	e17,493,977	45,956,490	12-31-29	SCR
87	Atlantic Refining Company	17,332,417	h153,520,041	12-31-29	SCR
88	Warner Brothers Pictures, Inc.	17,271,805	N. R.	8-31-29	SCR
89	International Shoe Co.	17,031,435	132,110,130	11-30-29	SCR
90	Drug Inc.	17,013,543	N. R.	12-31-29	SCR
91	Sinclair Cons. Oil Corp.	16,599,037	b199,268,129	12-31-29	SCR
92	Commonwealth Edison Company	16,322,769	b83,486,745	12-31-29	SCR
93	Texas Gulf Sulphur Company	e16,247,478	29,883,243	12-31-29	SCR
94	Assoc. Gas & Electric Co.	16,183,945	b68,903,253	12-31-29	SCR
95	Radio Corporation of Amer.	15,892,562	182,137,739	12-31-29	SCR
96	Pacific Gas & Electric Co.	15,740,486	b64,440,588	12-31-29	SCR
97	Corn Products Refining Co.	15,647,687	N. R.	12-31-29	SCR
98	Chicago & North Western Ry. Co.	15,599,056	a154,732,947	12-31-29	SCR
99	Niagara Hudson Power Corp.	15,588,539	b79,722,803	12-31-29	SCR
100	Paramount Publix Corporation	15,544,544	N. R.	12-23-29	SCR
[fol. 1067]					
101	Reading Company	15,508,941	a$97,196,955	12-31-29	SCR
102	Southern California Edison Co., Ltd.	15,483,958	b39,602,660	12-31-29	SCR
103	Western Union Telegraph Co.	15,474,893	a145,667,196	12-31-29	SCR
104	Deere & Company	15,181,949	N. R.	10-31-29	SCR
105	Union Oil Co. of California	15,019,635	88,864,519	12-31-29	SCR
106	Kresge (S. S.) Co.	14,952,211	156,456,732	12-31-29	SCR
107	Timken Roller Bearing Co.	14,926,306	N. R.	12-31-29	SCR
108	Prairie Oil & Gas Co.	14,331,643	b132,205,827	12-31-29	SCR
109	Standard Gas & Elect. Co.	14,287,834	b172,762,748	12-31-29	SCR
110	Chicago, Rock Island & Pacific Ry Co.	14,007,321	a147,721,562	12-31-29	SCR
111	Tide Water Associated Oil Co.	14,000,689	b175,922,744	12-31-29	SCR
112	Louisville & Nashville R. R. Co.	13,726,543	a132,055,983	12-31-29	SCR
113	Philadelphia Company	13,617,896	b63,676,776	12-31-29	SCR
114	Gillette Safety Razor Co.	13,581,683	N. R.	12-31-29	SCR

a—Total operating revenue. b—Gross revenue. e—Before depletion. h—Gross operating income. N. R.—Not reported.
SCR—Standard Corporation Records.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
115	National Power & Light Co.	$13,557,090	b80,979,244	12-31-29	SCR
116	Illinois Central R. R. Co.	13,520,383	a180,976,182	12-31-29	SCR
117	Montgomery Ward & Co., Inc.	13,434,935	267,325,503	12-31-29	SCR
118	Del., Lackawanna & Western R. R. Co.	13,340,130	a81,743,222	12-31-29	SCR
119	Phillips Petroleum Company	13,212,591	b51,106,897	12-31-29	SCR
120	Detroit Edison Company	13,146,064	b56,558,279	12-31-29	SCR
121	Swift & Company	13,076,815	1,000,000,000*	11- 2-29	SCR
122	Duquesne Light Co.	12,917,522	N. R.	12-31-29	SCR
123	Hearst Cons. Publications, Inc.	12,854,626	85,273,739	12-31-29	SCR
124	Coca-Cola Company	12,758,276	39,260,813	12-31-29	SCR
125	National Steel Corp.	12,573,683	N. R.	12-31-29	SCR
126	Buffalo, Niagara & Eastern Power Corp.	12,479,642	a36,951,937	12-31-29	SCR
127	Penney (J. C.)	12,413,377	209,690,417	12-31-29	SCR
128	Ohio Oil Company	12,372,097	N. R.	12-31-29	SCR
129	Missouri Pacific R. R. Co.	12,217,763	a139,807,915	12-31-29	SCR
130	Consumers Power Company	12,047,140	N. R.	12-31-29	SCR
131	Atlantic Coast Line Railroad Co.	11,921,507	a72,371,894	12-31-29	SCR
132	Newmont Mining Corp.	11,777,048	N. R.	12-31-29	SCR
133	Loew's Inc.	11,756,956	116,201,937	8-31-29	SCR
134	Empire Gas & Fuel Co.	11,718,992	68,892,665	11-30-29	SCR
135	Inland Steel Company	11,712,374	68,585,431	12-31-29	SCR
136	Burroughs Adding Machine Co.	11,684,557	N. R.	12-31-29	SCR
137	Erie R. R. Co.	11,677,709	a129,230,437	12-31-29	SCR
138	Pittsburgh Plate Glass Co.	11,644,833	N. R.	12-31-29	SCR
139	Wrigley (Wm.) Jr., Co.	11,608,708	N. R.	12-31-29	SCR
140	Caterpillar Tractor Co.	11,600,446	51,812,461	12-31-29	SCR
141	Hudson Motor Car Co.	11,594,854	201,017,596	12-31-29	SCR
142	Crane Company	11,558,085	N. R.	12-31-29	SCR
143	Northern Ohio Power & Light Co.	11,536,716	N. R.	4-30-30	SCR
144	New England Telephone & Telegraph Co.	11,499,173	N. R.	12-31-29	SCR

145	American Light & Traction	11,465,496	b49,297,517	12-31-29	SCR
146	United Light & Power Co.	11,381,767	96,672,008	6-30-30	SCR
147	Studebaker Corp.	11,346,028	145,303,833	12-31-29	SCR
148	Ingersoll-Rand Co.	10,689,686	N. R.	12-31-29	SCR
149	Electric Auto-Lite Company	10,514,369	N. R.	12-31-29	SCR
150	St. Louis-San Francisco Ry. Co.	10,228,860	a89,109,286	12-31-29	SCR
[fol. 1068]					
151	National Lead Company	10,222,897	N. R.	12-31-29	SCR
152	Inter. Paper & Power Co	9,886,003	148,575,724	12-31-29	SCR
153	Pan Amer. Petroleum & Transport Co	9,825,992	N. R.	12-31-29	SCR
154	Armour & Company (Ill.)	9,810,518	900,000,000*	11- 2-29	SCR
155	United Shoe Machinery Corp	9,670,923	N. R.	2-28-30	SCR
156	Electric Power & Light Corp	9,614,302	b61,204,469	3-31-30	SCR
157	Fox Film Corp	9,469,050	N. R.	12-28-29	SCR
158	Marshall, Field & Co., Inc	9,388,713	179,659,338	12-31-29	SCR
159	New Jersey Zinc Co. (The)	9,221,794	N. R.	12-31-29	SCR
160	Cleveland, Cinn., Chic. & St. L. Ry. Co	9,215,987	N. R.	12-31-29	SCR
161	R. H. Macy & Co., Inc	9,051,840	135,856,663	2- 1-30	SCR
162	Interborough Rapid Transit Co	9,050,666	b69,174,295	6-30-29	SCR
163	Continental Oil Company	9,028,661	81,893,797	12-31-29	SCR
164	Continental Can Co	8,967,702	N. R.	12-31-29	SCR
165	Union Elect. Light & Power Co. (Mo.)	8,928,591	b31,625,471	3-31-30	SCR
166	Colgate-Palmolive-Peet Co	8,910,631	100,560,689	12-31-29	SCR
167	Westinghouse Air Brake Co	8,822,711	N. R.	12-31-29	SCR
168	Northern States Power Co. (Del.)	8,806,885	N. R.	12-31-29	SCR
169	Quaker Oats Company	8,735,205	N. R.	12-31-29	SCR
170	Richfield Oil Co. of Calif	8,554,494	83,430,834	12-31-29	SCR
171	Missouri-Kansas-Texas R. R. Co	8,526,241	a56,024,439	12-31-29	SCR
172	Duke Power Co	8,521,529	N. R.	12-31-29	SCR
173	Cleveland Elec. Illuminating Co. (The)	8,418,728	N. R.	12-31-29	SCR
174	Parke, Davis & Co	8,381,283	N. R.	12-31-29	SCR
175	Otis Elevator Co	8,370,528	19,061,763	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.
a—Total operating revenue. b—Gross revenue. *—Approximate.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
176	Mohawk Hudson Power Corp	$8,363,878	N. R.	12-31-29	SCR
177	Ohio Bell Telephone Co	8,351,373	N. R.	12-31-29	SCR
178	National Cash Register Co	8,339,640	57,607,181	12-31-29	SCR
179	Sun Oil Company	8,242,492	b86,007,947	12-31-29	SCR
180	Crucible Steel Co. of America	8,162,344	N. R.	12-31-29	SCR
181	United Aircraft & Transport Co	8,058,404	31,423,618	12-31-29	SCR
182	Wheeling Steel Corp	8,005,664	84,687,303	12-31-29	SCR
183	New England Power Association	8,002,454	N. R.	12-31-29	SCR
184	Electric Storage Battery Co	7,910,905	48,412,420	12-31-29	SCR
185	Wabash Ry. Co	7,854,404	a76,632,974	12-31-29	SCR
186	American Water Works & Elec. Co	7,821,478	b54,119,004	12-31-29	SCR
187	Del. & Hudson Co	7,808,713	a41,421,378	12-31-29	SCR
188	Calumet & Arizona Mining Co	e7,733,603	N. R.	12-31-29	SCR
189	Firestone Tire & Rubber Co	7,694,918	144,585,804	10-31-29	SCR
190	Mid-Continent Pet. Corp	7,683,378	N. R.	12-31-29	SCR
191	Borg Warner Corp	7,669,795	N. R.	12-31-29	SCR
192	Pacific Lighting Corp	7,641,103	b48,874,970	6-30-30	SCR
193	Cons. Gas Elec. Light & Pwr. Co. of Balt	7,627,545	a28,017,878	12-31-29	SCR
194	Utilities Power & Light Corp	7,617,657	b52,348,686	12-31-29	SCR
195	Gold Dust Corp	7,586,963	N. R.	12-31-29	SCR
196	St. Joseph Lead Co	7,466,003	N. R.	12-31-29	SCR
197	Pere Marquette Ry. Co	7,458,460	a48,468,439	12-31-29	SCR
198	Goodrich (B. F.) Co	7,446,310	164,494,957	12-31-29	SCR
199	Hershey Chocolate Corp	7,435,779	41,371,913	12-31-29	SCR
200	Brooklyn-Manhattan Transit Corp	e7,419,644	a60,700,981	6-30-30	SCR
[fol. 1069]					
201	Bendix Aviation Corp	7,416,408	$12,765,769	12-31-29	SCR
202	N. Y., Chic. & St. Louis R. R. Co	7,390,042	a56,385,457	12-31-29	SCR
203	Lehigh Valley R. R. Co	7,362,574	a71,722,735	12-31-29	SCR
204	Smith (A. O.) Corp	7,308,962	N. R.	7-31-29	SCR
205	Underwood Elliott Fisher Co	7,283,582	N. R.	12-31-29	SCR

206	Edison Electric Illuminating Co	7,263,323	b29,664,585	12-31-29	SCR
207	General Baking Co	7,239,221	N. R.	12-28-29	SCR
208	Barnsdall Corp	7,204,325	31,285,004	12-31-29	SCR
209	Public Service Co. of Northern Ill	7,100,870	b33,329,811	12-31-29	SCR
210	Chic., Milw., St. Paul & Pac. R. R. Co	7,074,014	a171,361,385	12-31-29	SCR
211	Lambert Company	7,019,349	N. R.	12-31-29	SCR
212	American Sugar Refining Co	6,928,794	N. R.	12-31-29	SCR
213	Central Pacific Ry. Co	6,881,882	N. R.	5-31-29	SCR
214	American Locomotive Co	6,851,301	N. R.	12-31-29	SCR
215	Mack Trucks, Inc	6,841,068	57,227,200	12-31-29	SCR
216	Stewart-Warner Corp	6,838,938	N. R.	12-31-29	SCR
217	Maytag Company (The)	6,838,884	25,625,557	12-31-29	SCR
218	Metro-Goldwyn Pictures Corp	6,818,918	N. R.	8-31-29	SCR
219	People's Gas Light & Coke Co	6,782,960	41,887,037	12-31-29	SCR
220	National Fuel Gas Co	6,726,192	N. R.	12-31-29	SCR
221	Inter. Business Machines Corp	6,705,967	N. R.	12-31-29	SCR
222	Continental Baking Corp	6,671,101	N. R.	12-31-29	SCR
223	Standard Oil (Kentucky)	6,652,991	N. R.	12-31-29	SCR
224	Illinois Power & Light Corp	6,604,041	b37,501,235	12-31-29	SCR
225	American Stores Co	6,594,822	143,346,157	12-31-29	SCR
226	Johns-Manville Corp	6,591,917	61,994,885	12-31-29	SCR
227	Lone Star Gas Corp	6,540,581	b18,210,710	12-31-29	SCR
228	Pure Oil Company	6,539,522	b76,889,316	3-31-30	SCR
229	Long Island R. R. Co. (The)	6,353,676	N. R.	12-31-29	SCR
230	May Dept. Stores	6,174,925	112,724,226	1-31-30	SCR
231	Safeway Stores, Inc	6,147,313	213,496,254	12-31-29	SCR
232	American Rolling Mills Co	6,110,570	70,434,232	12-31-29	SCR
233	General Gas & Electric Corp. (Del.)	6,086,052	N. R.	12-31-29	SCR
234	City Ice & Fuel Co. (The)	6,056,672	27,592,429	12-31-29	SCR
235	Remington Rand, Inc	6,040,554	64,180,507	3-31-30	SCR
236	California Packing Corp	6,024,349	N. R.	2-28-30	SCR
237	Sherwin-Williams Co. (The)	6,019,475	75,778,072	8-31-29	SCR
238	Commercial Credit Co	6,011,697	22,041,183	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
c—Preliminary. e—Before depletion. h—Gross operating income.

TABLE III—Continued

No.	Name of Company	1929 Net income	1929 Sales	Year ending	Source of data
239	Boston & Maine Railroad Co	$5,993,841	$a78,481,438	12-31-29	SCR
240	Air Reduction Co	5,972,996	21,801,994	12-31-29	SCR
241	Ohio Power Company (The)	5,971,796	N. R.	12-31-29	SCR
242	New York Power & Light Corp	5,956,050	N. R.	12-31-29	SCR
243	Kroger Grocery & Baking Co	5,919,096	286,611,214	12-31-29	SCR
244	Independent Oil & Gas Co	5,882,180	b26,504,299	12-31-29	SCR
245	Kress (S. H.) & Co	5,834,400	68,474,993	12-31-29	SCR
246	Great Western Sugar Co	5,810,267	N. R.	2-28-30	SCR
247	Skelly Oil Company	5,786,490	b32,633,438	12-31-29	SCR
248	General American Tank Car Corp	5,770,741	30,181,826	12-31-29	SCR
249	Virginian Railway Co	5,752,784	a19,871,637	12-31-29	SCR
250	Cleveland-Cliffs Iron Co. (The)	5,685,029	N. R.	12-31-29	SCR
[fol. 1079]					
251	Rio Grande Oil Company	5,659,943	23,308,468	12-31-29	SCR
252	Purity Bakeries Corporation	5,652,285	48,219,021	12-28-29	SCR
253	Brooklyn Union Gas Co. (The)	5,553,268	b25,920,991	12-31-29	SCR
254	Phelps Dodge Corporation	5,371,623	38,705,671	12-31-29	SCR
255	American Car and Foundry Company	5,363,765	N. R.	4-30-30	SCR
256	Calumet & Hecla Cons. Copper Co	5,326,932	20,665,652	12-31-29	SCR
257	Harbison-Walker Refractories, Co	5,256,413	N. R.	12-31-29	SCR
258	Hocking Valley Ry. Co	5,189,901	b20,888,860	12-31-29	SCR
259	South Pennsylvania Oil Company	5,139,296	N. R.	12-31-29	SCR
260	American Steel Foundries	5,121,487	N. R.	12-31-29	SCR
261	U. S. Gypsum Company	5,102,305	N. R.	12-31-29	SCR
262	Central R. R. Co. of N. J.	5,042,755	a58,136,940	12-31-29	SCR
263	Armstrong Cork Company	4,980,537	N. R.	12-31-29	SCR
264	International Cement Corp	4,950,433	28,370,032	12-31-29	SCR
265	General Theatres Equipment, Inc	4,903,183	11,250,330	12-31-29	SCR
266	New York & Queens Electric Lt. & Pwr	4,867,737	18,126,566	12-31-29	SCR
267	Inspiration Cons. Copper Company	e4,753,802	13,182,122	12-31-29	SCR
268	West Virginia Pulp & Paper Company	4,750,101	N. R.	10-31-29	SCR

269	First National Stores, Inc	4,736,057	107,635,216	3-29-30	SCR
270	Montana Power Company (The)	4,729,900	N. R.	12-31-29	SCR
271	Cerro de Pasco Copper Corp	4,729,113	28,656,394	12-31-29	SCR
272	Transcontinental Oil Company	4,723,990	b18,983,920	12-31-29	SCR
273	U. S. Industrial Alcohol Co	4,720,858	N. R.	12-31-29	SCR
274	General Cable Corporation	4,709,160	N. R.	12-31-29	SCR
275	Koppers Gas & Coke Company	4,689,351	N. R.	12-31-29	SCR
276	Wheeling & Lake Erie Ry. Co	4,679,321	a21,335,222	12-31-29	SCR
277	North American Light & Power Co	4,676,115	b45,806,802	12-31-29	SCR
278	St. Regis Paper Company	4,664,874	b22,950,590	12-31-29	SCR
279	Great Northern Iron Ore Properties	4,659,184e	N. R.	12-31-29	SCR
280	Simmons Company	4,626,561	50,363,873	12-31-29	SCR
281	General Mills, Inc	4,609,101	163,071,661	5-31-30	SCR
282	Patino Mines & Enter. Cons. Inc	4,573,239	b20,238,789	12-31-29	SCR
283	Pittsburgh Steel Company	4,535,437	N. R.	6-30-29	SCR
284	Owens-Illinois Glass Company	4,451,826	N. R.	12-31-29	SCR
285	Lehigh & Wilkes-Barre Coal Co. (Pa.)	4,408,718	b29,803,573	12-31-29	SCR
286	Spang, Chalfont & Co., Inc	4,394,418	N. R.	12-31-29	SCR
287	Crown Zellerbach Corporation	4,374,317	N. R.	4-30-30	SCR
288	Hercules Powder Company	4,358,904	b32,976,417	12-31-29	SCR
289	Philadelphia Rapid Transit	4,337,509	a55,909,553	12-31-29	SCR
290	Allis-Chalmers Manufacturing Co	4,330,888	45,302,355	12-31-29	SCR
291	General Cigar Company	4,295,961	13,994,420	12-31-29	SCR
292	Buffalo General Electric Co	4,292,757	N. R.	12-31-29	SCR
293	Checker Cab Manufacturing Corp	4,280,416	N. R.	12-31-29	SCR
294	Richman Brothers Company	4,208,037	N. R.	12-31-29	SCR
295	Standard Oil of Ohio	4,202,385	62,871,089	12-31-29	SCR
296	Canon Mills Company	4,160,067	30,464,094	12-31-29	SCR
297	Scovill Mfg. Company	4,120,087	N. R.	12-31-29	SCR
298	Hahn Department Stores, Inc	4,090,061	112,323,306	1-31-30	SCR
299	Freeport Texas Company	e4,085,042	14,778,332	11-30-29	SCR
300	Coty, Inc	4,068,892	N. R.	12-31-29	SCR

a—Total operating revenue. b—Gross revenue. e—Before depletion. N. R.—Not reported.
SCR—Standard Corporation Records. h—Gross operating income.

TABLE III—Continued

[fol. 1071]

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
301	Eastern Gas & Fuel Associates	$4,043,968	N. R.	12-31-29	SCR
302	McKesson & Robbins, Inc., (Md.)	4,014,408	$140,635,026	12-31-29	SCR
303	Superheater Company	3,989,764	N. R.	12-31-29	SCR
304	Kansas City Power & Light Co	3,960,745	N. R.	12-31-29	SCR
305	Allied Power & Light Corporation	3,954,956	N. R.	6-30-29	SCR
306	Kimberly-Clark Corporation	3,872,615	22,373,267	12-31-29	SCR
307	Stone & Webster, Inc	3,833,047	N. R.	3-31-30	SCR
308	Miami Copper Company	e3,821,081	11,033,223	12-31-29	SCR
309	U. S. Smelting, Refining & Mining Co	3,786,692	N. R.	12-31-29	SCR
310	Petroleum Corporation of America	3,752,530	N. R.	1-16—12-31-29	SCR
311	National Supply Co. of Del. (The)	3,715,974	N. R.	12-31-29	SCR
312	Vick Chemical Company	3,704,607	N. R.	6-30-29	SCR
313	Hanna (M. A.) Co. (The)	3,698,624	N. R.	12-31-29	SCR
314	Otis Steel Company	3,687,690	N. R.	12-31-29	SCR
315	Commercial Solvents Corporation	3,667,402	N. R.	12-31-29	SCR
316	Union Tank Car Co	3,666,589	N. R.	12-31-29	SCR
317	Columbian Carbon Company	3,665,491	12,659,484	12-31-29	SCR
318	Howe Sound Company	3,662,475	b16,346,101	12-31-29	SCR
319	Case (J. I.) Company	3,653,753	N. R.	12-31-29	SCR
320	Nashville, Chattanooga & St. L. Ry	3,623,948	N. R.	12-31-29	SCR
321	Indianapolis Power & Light Company	f3,609,585	N. R.	12-31-29	SCR
322	Metropolitan Edison Company	3,604,264	N. R.	12-31-29	SCR
323	Auburn Automobile Company	3,603,200	37,551,442	11-30-29	SCR
324	Southern New England Tel. Company	3,575,176	b16,666,184	12-31-29	SCR
325	Reynolds Metals Company	3,558,582	N. R.	12-31-29	SCR
326	Colorado & Southern Ry. Co	3,545,069	N. R.	12-31-29	SCR
327	American Laundry Machinery Co	3,542,140	N. R.	12-31-29	SCR
328	Kraft-Phenix Cheese Company	3,514,840	86,393,675	12-31-29	SCR
329	Oliver Farm Equipment Company	3,502,996	27,437,973	12-31-29	SCR
330	Midland Utilities Company	3,484,894	27,317,244	12-31-29	SCR
331	Link-Belt Company	3,484,686	26,519,339	12-31-29	SCR

332	Motor Wheel Corporation	3,479,664	N. R.	12-31-29	SCR
333	Hupp Motor Car Corporation	3,468,937	52,505,643	12-31-29	SCR
334	U. S. Realty & Improvement Co	3,460,642	N. R.	j12-31-29	SCR
335	Morrell (John) & Co., Inc	3,435,799	94,660,595	k11-2-29	SCR
336	American Ice Company	3,431,124	20,804,078	12-31-29	SCR
337	Penn-Ohio Edison Company	3,425,070	b28,802,052	6-30-29	SCR
338	United Piece Dye Works (The)	3,391,321	N. R.	12-31-29	SCR
339	Bibb Manufacturing Company	*3,389,000	N. R.	8-31-29	SCR
340	Federal Water Service Corp	3,380,706	b15,867,080	12-31-29	SCR
341	American Bank Note Company	3,380,592	N. R.	12-31-29	SCR
342	Revere Copper & Brass, Inc	3,379,679	N. R.	12-31-29	SCR
343	Household Finance Corporation	3,372,418	N. R.	12-31-29	SCR
344	Kansas City Southern Ry. Company	3,365,219	a21,978,222	12-31-29	SCR
345	Shattuck (F. G.) Co	3,355,720	26,442,206	12-31-29	SCR
346	National Public Service Corp	3,348,242	31,709,518	12-31-29	SCR
347	American Home Products Corp	3,340,692	13,644,606	12-31-29	SCR
348	Northern Indiana Public Service Co	3,337,134	N. R.	12-31-29	SCR
349	Libby-Owens Ford Glass Co	3,316,953	N. R.	9-30-29	SCR
350	Allegheny Steel Company	3,311,492	b28,863,517	12-31-29	SCR
[fol. 1072]					
351	Associated Dry Goods Corporation	3,304,986	N. R.	1-31-30	SCR
352	Consolidated Cigar Corporation	3,302,085	N. R.	12-31-29	SCR
353	Bucyrus-Erie Company	3,301,960	N. R.	12-31-29	SCR
354	Kelsey-Hayes Wheel Corporation	3,281,876	N. R.	12-31-29	SCR
355	American Chain Company, Inc	3,279,341	N. R.	12-31-29	SCR
356	Pittsburgh Screw & Bolt Corp	3,271,749	N. R.	12-31-29	SCR
357	Dayton Power & Light Co. (The)	3,256,235	N. R.	12-31-29	SCR
358	American Metal Co., Ltd	3,252,879	N. R.	12-31-29	SCR
359	American Brake Shoe & Foundry Co	3,230,080	N. R.	12-31-29	SCR
360	Torrington Co. (The) (of Maine)	3,207,386	N. R.	6-30-29	SCR
361	Raybestos-Manhattan, Inc	3,206,294	22,290,619	12-31-29	SCR
362	Island Creek Coal Company	3,198,101	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. i—9 mos. ended 3/31/30. e—Before depletion. b—Gross revenue.
f—Before taxes and depreciation. j—8 mos. ended 12/31/29. k—13 mos. ended 11/2/29. *—Approximate.
a—Total operating revenue.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
363	Boston Elevated Ry. Company	$3,183,601	b34,007,696	12-31-29	SCR
364	Group Number One Oil Corporation	3,176,811	N. R.	12-31-29	SCR
365	Hawaiian Pineapple Co., Ltd.	3,160,308	15,201,487	12-31-29	SCR
366	New England Public Service Co	3,104,669	N. R.	12-31-29	SCR
367	Walgreen Company	3,100,466	46,622,639	12-31-29	SCR
368	Ward Baking Corporation	3,124,400	N. R.	12-28-29	SCR
369	General Ry. Signal Co.	3,118,345	N. R.	12-31-29	SCR
370	Detroit Street Railways	3,103,189	N. R.	12-31-29	SCR
371	Indiana Harbor Belt R. R. Co.	3,086,699	b12,967,466	12-31-29	SCR
372	Long Island Lighting Company	3,085,128	N. R.	12-31-29	SCR
373	Cincinnati, New Orleans & Texas	3,059,681	N. R.	12-31-29	SCR
374	Grant (W. T.) Co.	3,057,750	65,902,419	1-31-30	SCR
375	National Electric Power Company	3,049,098	N. R.	12-31-29	SCR
376	Midland United Company	3,043,596	N. R.	12-31-29	SCR
377	Indian Territory Illuminating Oil	3,033,281	N. R.	10-31-29	SCR
378	Columbus Railway, Power & Light	3,019,558	N. R.	12-31-29	SCR
379	Greene Cananea Copper Company	3,013,254	N. R.	12-31-29	SCR
380	Magma Copper Company	e3,004,764	N. R.	12-31-29	SCR
381	Warren Brothers Company	3,002,238	35,364,069	12-31-29	SCR
382	United Verde Extension Mining Co	2,988,897	b11,780,473	12-31-29	SCR
383	San Joaquin Light & Power Corp.	2,986,843	b11,336,744	12-31-29	SCR
384	Lehigh Coal & Navigation Company	2,975,088	b24,125,367	12-31-29	SCR
385	National Sugar Refining Co.—N. J.	2,954,744	N. R.	12-31-29	SCR
386	Celanese Corp of America	2,952,321	N. R.	12-31-29	SCR
387	White Star Refining Co.	2,949,600	N. R.	12-31-29	SCR
388	Glidden Company	2,941,610	38,319,739	10-31-29	SCR
389	Mohawk Valley Company	2,921,146	b14,729,498	12-31-29	SCR
390	Western Md. Ry. Co.	2,917,822	a18,985,707	12-31-29	SCR
391	Connecticut Electric Service Co.	2,909,161	N. R.	12-31-29	SCR
392	Spring Valley Water Company	2,900,045	6,942,305	12-31-29	SCR
393	Congress Cigar Company, Inc.	2,882,116	15,906,394	12-31-29	SCR

394	Atlantic, Gulf & W. Indies S. S.	2,868,914	a34,011,399	12-31-29	SCR
395	General Public Service Corp	2,865,237	N. R.	12-31-29	SCR
396	Paraffine Companies, Inc	2,863,258	N. R.	6-30-29	SCR
397	Blaw-Knox Company	2,838,735	17,493,414	12-31-29	SCR
398	Canada Dry Ginger Ale, Inc	2,835,293	10,624,629	12-31-29	SCR
399	Ohio Brass Company (The)	2,823,057	N. R.	12-31-29	SCR
400	Libby, McNeill & Libby	2,822,532	N. R.	3-1-30	SCR
[fol. 1073]					
401	Houdaille-Hershey Company	2,819,669	N. R.	12-31-29	SCR
402	Lago Oil & Transport Corporation	2,816,144	21,330,028	12-31-29	SCR
403	Pillsbury Flour Mills, Inc	2,814,564	N. R.	6-30-29	SCR
404	Kayser (Julius) & Company	2,810,268	28,659,267	6-30-29	SCR
405	Western Massachusetts Cos	2,776,235	b9,260,526	12-31-29	SCR
406	Endicott Johnson Corporation	2,771,564	68,415,058	12-31-29	SCR
407	U. S. Tobacco Company	2,771,037	N. R.	12-31-29	SCR
408	Amerada Corporation	2,758,900	N. R.	12-31-29	SCR
409	Fox Theatres Corporation	2,748,006	N. R.	10-27-29	SCR
410	Federated Department Stores, Inc	2,740,114	117,003,398	1-31-30	SCR
411	Lehigh Portland Cement Company	2,737,477	19,346,791	11-30-29	SCR
412	Salt Creek Producers Association, Inc	2,736,240	N. R.	12-31-29	SCR
413	National Tea Company	2,731,267	90,210,077	12-31-29	SCR
414	Loose-Wiles Biscuit Company	2,714,865	N. R.	12-31-29	SCR
415	Marlin-Rockwell Corporation	2,707,405	N. R.	12-31-29	SCR
416	Beech-Nut Packing Company	2,693,749	23,732,089	12-31-29	SCR
417	Cutler Hammer, Inc	2,687,874	12,368,340	12-31-29	SCR
418	Matson Navigation Company	2,653,044	N. R.	12-31-29	SCR
419	Florsheim Shoe Co. (The)	2,622,453	N. R.	10-31-29	SCR
420	Bohn Aluminum & Brass Corporation	2,619,722	b4,135,517	12-31-29	SCR
421	Interlake Steamship Co. (The)	2,612,874	N. R.	12-31-29	SCR
422	Yale & Towne Manufacturing Co	2,585,624	18,734,066	12-31-29	SCR
423	U. S. Pipe & Foundry Company	2,581,230	N. R.	12-31-29	SCR
424	American Machine & Foundry Co	2,560,643	7,097,753	12-31-29	SCR
425	Midland Steel Products Co. (The)	2,555,424	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue.
b—Gross revenue. e—Before depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
426	Acme Steel Company	$2,553,214	N. R.	12-31-29	SCR
427	General Refractories Company	2,553,124	N. R.	12-31-29	SCR
428	White Motor Company	2,547,646	48,652,557	12-31-29	SCR
429	Wesson Oil & Snowdrift Company	2,547,137	N. R.	8-31-29	SCR
430	Atlas Powder Company	2,542,692	22,011,930	12-31-29	SCR
431	American Hardware Corp.	2,533,708	N. R.	1-1-30	SCR
432	Worthington Pump & Machinery Corp.	2,529,[illegible]6	N. R.	12-31-29	SCR
433	Alabama Great Southern R. R. Co.	2,520,861	a10,326,630	12-31-29	SCR
434	Hart, Schaffner & Marx	2,514,676	N. R.	11-30-29	SCR
435	Cudahy Packing Co. (The)	2,512,850	267,960,185	11-2-29	SCR
436	Sparks-Withington Company	2,510,322	17,282,162	6-30-29	SCR
437	Blumenthal (Sydney) & Co., Inc.	2,497,194	18,409,469	12-31-29	SCR
438	Chicago Yellow Cab Co., Inc.	2,492,655	N. R.	12-31-29	SCR
439	Beatrice Creamery Company	2,489,353	83,681,636	2-28-30	SCR
440	Cincinnati and Suburban Bell Tel. Co.	2,480,966	N. R.	12-31-29	SCR
441	Babcock & Wilcox Company	2,439,003	N. R.	12-31-29	SCR
442	Creole Petroleum Corporation	2,434,189	N. R.	12-31-29	SCR
443	Briggs Manufacturing Company	2,426,669	N. R.	12-31-29	SCR
444	Inter. Mercantile Marine	2,423,350	a15,303,564	12-31-29	SCR
445	Equitable Office Building Corporation	2,415,548	N. R.	4-30-30	SCR
446	McKeesport Tin Plate Company (The)	2,402,200	17,232,562	12-31-29	SCR
447	Consolidated Film Industries, Inc.	2,389,373	9,644,800	12-31-29	SCR
448	Colorado Fuel & Iron	2,350,048	N. R.	12-31-29	SCR
449	Fairbanks Morse & Company	2,348,672	31,504,908	12-31-29	SCR
450	Hartford Electric Light Company	2,343,600	N. R.	12-31-29	SCR
[fol. 1074]					
451	Bunker Hill & Sullivan Mng. & Con. Co.	2,329,046	N. R.	12-31-29	SCR
452	American Cyanamid Company	2,328,928	N. R.	6-30-29	SCR
453	Helme (Geo. W.) Company	2,324,993	N. R.	12-31-29	SCR
454	Mathieson Alkali Works, Inc.	2,324,276	N. R.	12-31-29	SCR
455	Oklahoma Natural Gas Corporation	m2,312,692	N. R.	12-31-29	SCR

456	Ryerson (Joseph T.) & Son, Inc	2,308,084	N. R.	12-31-29	SCR
457	Wilson & Company, Inc	2,304,592	310,000,000	11- 2-29	SCR
458	Baldwin Locomotive Works (The)	2,300,463	42,796,587	12-31-29	SCR
459	Truscon Steel Company	2,297,465	36,090,469	12-31-29	SCR
460	U. S. Playing Card Company	2,294,761	N. R.	12-31-29	SCR
461	South Porto Rico Sugar Company	2,278,966	15,234,506	9-30-29	SCR
462	Horn & Hardart Co. (N. Y.)	2,274,719	b17,436,155	12-31-29	SCR
463	National Department Stores, Inc	2,269,364	83,457,272	1-31-30	SCR
464	McCrory Stores Corporation	2,257,582	N. R.	12-31-29	SCR
465	United Biscuit Company of America	2,254,098	b9,347,834	12-31-29	SCR
466	Niagara, Lockport & Ontario Power Co	2,253,986	b11,610,240	12-31-29	SCR
467	Trico Products Corporation	2,249,948	N. R.	12-31-29	SCR
468	Hudson & Manhattan R. R. Company	2,247,210	a8,964,657	12-31-29	SCR
469	Plymouth Oil Company	2,247,091	b5,746,994	12-31-29	SCR
470	Filenes (Wm.) Sons Company	2,234,981	47,422,264	1-31-30	SCR
471	Associated Telephone & Telegraph Co	2,233,224	b13,321,583	12-31-29	SCR
472	McGraw-Hill Publishing Co., Inc	2,231,993	N. R.	12-31-29	SCR
473	Mergenthaler Linotype Company	2,228,615	N. R.	9-30-29	SCR
474	Hormel (Geo. A.) & Company	2,217,397	40,047,231	10-26-29	SCR
475	Congoleum-Nairn, Inc	2,213,831	N. R.	12-31-29	SCR
476	Young (L. A.) Spring & Wire Corp	2,213,026	N. R.	12-31-29	SCR
477	Stanley Works (The)	2,206,188	N. R.	12-31-29	SCR
478	Holland Furnace Company	2,202,378	18,671,828	12-31-29	SCR
479	Federal Mining & Smelting Company	2,201,757	N. R.	12-31-29	SCR
480	Honolulu Consolidated Oil Company	2,200,762	N. R.	12-31-28	SCR
481	Roessler & Hasslacher Chemical Corp	2,186,694	N. R.	12-31-29	SCR
482	McCall Corporation	2,173,887	12,974,158	12-31-29	SCR
483	MacMarr Stores, Inc	2,173,523	83,972,105	12-31-29	SCR
484	Northern Central Railway Company	2,146,368	N. R.	12-31-29	SCR
485	Minnesota & Ontario Paper Company	2,165,877	N. R.	12-31-29	SCR
486	Interlake Iron Corporation	2,161,803	N. R.	12-31-29	SCR
487	Louisville Gas & Electric Co. (Del.)	2,154,533	N. R.	12-31-29	SCR
488	Motor Products Corporation	2,133,769	N. R.	12-31-29	SCR
489	Starrett Corporation	2,124,318	N. R.	3-31-30	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
m—Before Federal Taxes and depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
490	Spicer Mfg. Corp	$2,119,885	N. R.	12-31-29	SCR
491	International Printing Ink Corp	2,119,154	20,071,002	12-31-29	SCR
492	Manville-Jencks Company	2,116,427	N. R.	6-29-29	SCR
493	Hazel-Atlas Glass Company	2,108,619	N. R.	12-28-29	SCR
494	American Chicle Company	2,107,597	N. R.	12-31-29	SCR
495	Staley (A. E.) Mfg. Company	2,104,930	N. R.	12-31-29	SCR
496	Bliss (E. W.) Company	2,096,819	N. R.	12-31-29	SCR
497	National Acme Company (The)	2,087,334	N. R.	12-31-29	SCR
498	Pitts. & West Va. Ry. Co	2,083,348	N. R.	12-31-29	SCR
499	Newton Steel Company (The)	2,077,650	N. R.	12-31-29	SCR
500	Arundel Corporation (The)	2,059,841	N. R.	12-31-29	SCR
501	Mississippi River Power Company	2,050,708	N. R.	12-31-29	SCR
502	Spalding (A. G.) & Bros	2,050,447	27,886,334	10-31-29	SCR
503	Minneapolis, St. Paul & S. S. M. Ry	2,042,025	N. R.	12-31-29	SCR
504	Commonwealth Subsidiary Corporation	2,003,018	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.

[fol. 1075]

Table IV (immediately following) is a compilation of all domestic (U. S.) companies that reported a net income of $2,000,000 or over for the year 1920 as determined from the companies in Table III.

The 185 companies are arrayed in order (in Table IV) from the highest net income to the lowest.

Totals—Table IV

Number of companies	Year	Sales	Net income
185	(1920)	.....	$1,693,032,571
73	(1920)	$9,366,472,793	784,579,069

[fol. 1076]

TABLE IV

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of date
1	Standard Oil of New Jersey	$164,461,409	$657,909,828b	12-31-20	SCR
2	U. S. Steel Corporation	109,694,228	1,755,477,025b	12-31-20	SCR
3	American Telephone & Telegraph	70,686,904	N. R.	12-31-20	Poor's
4	Standard Oil of California	41,655,254	N. R.	12-31-20	Poor's
5	Standard Oil of Indiana	40,973,484	N. R.	12-31-20	SCR
6	Standard Oil of New York	39,405,631	N. R.	12-31-20	Poor's
7	General Motors Corporation	37,883,521	567,320,903	12-31-20	SCR
8	Union Pacific R. R. Co	36,264,320	a209,049,510	12-31-20	SCR
9	Texas Corporation	31,089,372	N. R.	12-31-20	SCR
10	United Fruit Company	29,008,307	N. R.	12-31-20	SCR
11	Gulf Oil Corp. of Penna	28,543,157	159,575,090	12-31-20	SCR
12	Empire Gas & Fuel Co	23,382,676	N. R.	12-31-20	Moody
13	Cities Service Company	23,319,243	N. R.	12-31-20	Poor & Moody
14	Chicago, Burlington & Quincy R. R.	22,924,364	N. R.	12-31-20	Poor's
15	Jones & Laughlin Steel Corp	22,611,085	N. R.	12-31-20	Poor's
16	General Electric Company	22,132,288	275,758,488	12-31-20	SCR
17	Eastman Kodak Company	18,566,211	N. R.	12-31-20	SCR
18	Sinclair Cons. Oil Corp	18,558,581	b166,648,932	12-31-20	SCR
19	Del., Lackawanna & Western R. R	17,168,123	a83,340,062	12-31-20	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Operating revenue. b—Gross revenue.

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
20	International Harvester Company	$16,655,353	N. R.	12-31-20	SCR
21	American Tobacco Company	15,151,155	N. R.	12-31-20	SCR
22	Du Pont de Nemours	14,563,232	93,983,292	12-31-20	SCR
23	Bethlehem Steel Corporation	14,458,835	274,431,236	12-31-20	SCR
24	Mid-Continent Pet. Corp.	13,552,108	N. R.	12-31-20	SCR
25	Western Union Telegraph Company	13,303,122	a119,991,825	12-31-20	SCR
26	Pan American Pet. & Trans. Co	12,987,753	N. R.	12-31-20	SCR
27	Pullman, Inc.	12,913,509	N. R.	7-31-20	Poor's
28	Westinghouse Electric & Mfg. Co.	12,617,536	b150,980,106	3-31-21	Poor's
29	Corn Products Refining Company	12,591,480	N. R.	12-31-20	SCR
30	Cuban Cane Products Co., Inc.	12,344,135	N. R.	9-20-20	SCR
31	Republic Steel Corporation	*12,335,185	N. R.	12-31-20	SCR
32	Cuban American Sugar Company	12,186,897	b90,413,179	12-31-20	SCR
33	International Paper & Power Co.	12,055,902	N. R.	12-31-20	Poor's
34	Union Oil Co. of California	12,038,881	63,430,146	12-31-20	SCR
35	Atchison, Topeka & Santa Fe Ry.	12,012,383	a228,925,070	12-31-20	SCR
36	Crucible Steel Co. of America	11,956,690	N. R.	8-31-20	SCR
37	Sears, Roebuck & Company	11,846,671	254,595,059	12-31-20	SCR
38	Wheeling Steel Corporation	11,276,272	99,822,887	12-31-20	SCR
39	Reynolds (R. J.) Tobacco Co.	10,691,294	N. R.	12-31-20	SCR
40	Atlantic Refining Company	10,513,694	a169,272,130	12-31-20	SCR
41	Studebaker Corporation	9,822,054	90,652,362	12-31-20	SCR
42	Woolworth (F. W.) & Company	9,775,252	140,918,981	12-31-20	SCR
43	Reading Company	9,721,743	N. R.	12-31-20	Poor's
44	Firestone & Rubber Company	9,396,912	114,980,969	10-31-20	Poor's
45	Central Aguirre Association	9,178,491	N. R.	7-31-20	SCR
46	Tide Water Associated Oil Co.	9,106,003	60,077,032	12-31-20	Poor's
47	Crane Company	8,969,311	N. R.	12-31-20	Chron.
48	Prairie Pipe Line Company	8,932,323	b27,317,238	12-31-20	SCR
49	Southern Pacific Company	8,905,268	a284,851,268	12-31-20	SCR
50	Pittsburgh Plate Glass Company	8,595,916	N. R.	12-31-20	SCR
[fol. 1077]					
51	American Car & Foundry Co.	8,550,855	N. R.	4-30-21	SCR

52	Allied Chemical & Dye Corp	8,420,324	N. R.	12-31-20	SCR
53	Vacuum Oil Company	8,386,784	N. R.	12-31-20	SCR
54	Inter. Mercantile Marine	8,307,284	N. R.	12-31-20	SCR
55	Liggett & Myers Tobacco Co	7,597,803	N. R.	12-31-20	SCR
56	New Jersey Zinc Co. (The)	7,583,863	N. R.	12-31-20	SCR
57	Humble Oil & Refining Co	*7,473,459	*32,538,070	12-31-20	Poor's
58	American Power & Light Co	7,431,310	N. R.	12-31-20	Moody's
59	Baltimore & Ohio R. R. Co	7,245,480	N. R.	12-31-20	SCR
60	Youngstown Sheet & Tube Co	7,216,112	N. R.	12-31-20	SCR
61	American Smelting & Refining Co	7,160,421	N. R.	12-31-20	SCR
62	American Locomotive Co	7,111,126	N. R.	12-31-20	SCR
63	Nash Motors Company	7,007,471	57,185,766	11-30-20	Poor's
64	Gillette Safety Razor Co	6,803,407	N. R.	12-31-20	Poor's
65	American Rad. & Standard San. Corp	6,410,207*	N. R.	12-31-20	Poor's
66	Packard Motor Car Company	6,395,468	58,894,525	8-31-20	SCR
67	Central Pacific Ry. Co	6,335,909	N. R.	12-31-20	Poor's
68	Inter. Shoe Company	6,270,234	N. R.	11-30-20	Poor's
69	New York Edison Company	6,234,299	b33,806,849	12-31-20	Moody's
70	New England Tel. & Tel. Co	6,137,545	b34,273,897	12-31-20	Moody's
71	Clev., Cin., Chic. & St. L. Ry. Co	5,888,779	N. R.	12-31-20	Poor's
72	Great Northern Iron Ore Prop	5,854,856	N. R.	12-31-20	Poor's
73	National Biscuit Company	5,543,120	N. R.	12-31-20	SCR
74	Columbia Gas & Elec. Corp	5,533,794	N. R.	12-31-20	Poor's
75	South Penn. Oil Co	5,489,591	N. R.	12-31-20	Moody's
76	Philadelphia Company	5,488,716	b16,566,668	12-31-20	Poor's '23
77	Fajardo Sugar Co. of Porto Rico	5,456,917	N. R.	7-31-20	Poor's
78	Westinghouse Air Brake Co	5,330,464	N. R.	12-31-20	SCR
79	Paramount Publix Corp	5,321,240	N. R.	12-25-20	SCR
80	Armour & Co. (Ill.)	5,319,974	N. R.	10-30-20	P. & M.
81	South Porto Rico Sugar Co	5,278,277	22,250,851	9-30-20	SCR
82	Pure Oil Company	5,213,219	72,977,460	3-31-21	SCR
83	Swift & Company	5,170,383	*1,100,000,000	11- 1-20	SCR
84	National Supply Co. of Del. (The)	5,167,850f	N. R.	12-31-20	SCR
85	Ewa Plantation Company	5,119,898	N. R.	12-31-20	Poor's

N. R.—Not reported. SCR—Standard Corporation Records. b—Gross revenue. *—Estimated. a—Total operating revenue.

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
86	Hanna (M. A.) Co. (The)	$4,946,481	N. R.	12-31-20	Poor's
87	American Can Co	4,830,918	N. R.	12-31-20	SCR
88	National Lead Co	4,735,509	N. R.	12-31-20	SCR
89	Standard Oil (Ohio)	4,722,012	N. R.	12-31-20	SCR
90	Bibb Manufacturing Co	k4,715,817	N. R.	8-31-20	Moody's
91	May Dept. Stores	4,708,674	68,254,715	1-31-21	SCR
92	Commonwealth Edison Co	4,708,402	b35,317,135	12-31-20	SCR
93	Elec. Storage Battery Co	4,692,478	N. R.	12-31-20	SCR
94	Union Tank Car Company	4,679,544	N. R.	12-31-20	SCR
95	Deere & Company	4,647,718	N. R.	10-31-20	SCR
96	Sherwin-Williams Co. (The)	4,532,637	N. R.	8-31-20	Poor's
97	Baldwin Locomotive Works (The)	4,428,518	73,542,666	12-31-20	SCR
98	American Sugar Refining Co	4,404,916	N. R.	12-31-20	SCR
99	Burroughs Adding Machine Co	4,289,869	41,072,788	12-31-20	SCR
100	Great Western Sugar Co	4,264,171	N. R.	2-28-21	SCR
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101	California Packing Corporation	4,253,015	N. R.	2-28-21	Poor's
102	Owens-Illinois Glass Company	4,222,205	N. R.	12-31-20	SCR
103	American Steel Foundries	4,165,228	N. R.	12-31-20	SCR
104	Inland Steel Company	4,107,061	N. R.	12-31-20	SCR
105	Lehigh Coal & Navigation Company	4,045,053	N. R.	12-31-20	SCR
106	Pacific Gas & Electric Company	3,922,061	b34,475,372	12-31-20	SCR
107	Ingersoll-Rand Company	3,885,928	N. R.	12-31-20	Poor's
108	Michigan Central R. R. Co	3,805,785	N. R.	12-31-20	Poor's
109	Drug, Inc	f3,797,997	N. R.	12-31-20	SCR
110	Standard Oil of Kentucky	3,770,260	N. R.	12-31-20	SCR
111	Johns-Manville Corp	3,703,314	45,138,181	12-31-20	Poor's
112	Allis-Chalmers Mfng. Co	3,564,249	p31,516,209	12-31-20	SCR
113	Waialua Agric. Company Ltd	3,504,722	N. R.	12-31-20	Poor's
114	North American Company	3,438,039	39,611,162	12-31-20	SCR
115	Fleischmann Company (The)	3,409,479	34,320,910	12-31-20	Poor's & Moody
116	General Cigar Company	3,400,420	N. R.	12-31-20	SCR

117	Duquesne Light Company	3,362,347	N. R.	12-31-20	SCR
118	American Rolling Mills Company	3,344,868	N. R.	12-31-20	Poor's
119	Texas Gulf Sulphur Company	3,327,031	8,153,871	12-31-20	SCR
120	U. S. Industrial Alcohol Company	3,268,924	N. R.	12-31-20	SCR
121	Wrigley (Wm.) Jr., Company	3,29[illegible],748	N. R.	12-31-20	SCR
122	Endicott Johnson Corporation	3,242,363	74,970,103	12-31-20	SCR
123	Virginian R. R. Co	3,122,155	a18,158,853	12-31-20	SCR
124	Southern California Edison Co., Ltd	3,074,796	b14,647,896	12-31-20	SCR
125	Montana Power Company (The)	3,057,723	N. R.	12-31-20	Poor & Moody
126	American Light and Traction	3,051,414	N. R.	12-31-20	Poor's
127	St. Joseph Lead Company	3,011,426	N. R.	12-31-20	SCR
128	Libby, McNeill & Libby	2,921,033	N. R.	j3- 5-21	Poor's
129	U. S. Smelting, Refng. & Mng. Co	i2,909,275	N. R.	12-31-20	SCR
130	Philadelphia Electric Company	2,900,259	b20,043,336	12-31-20	Moody's
131	Miami Copper Company	e2,888,478	N. R.	12-31-20	SCR
132	Otis Elevator	2,880,277	N. R.	12-31-20	SCR
133	Harbison-Walker Refractories Co	2,869,996	N. R.	12-31-20	Poor's
134	Eastern Gas & Fuel Associates	2,854,480	N. R.	12-31-20	SCR
135	Edison Electric Illuminating Co	2,801,530	b16,162,568	6-30-21	SCR
136	Borden Company (The)	2,789,621	120,293,573	12-31-20	SCR
137	Northern Pacific R. R. Company	2,773,313	a113,084,408	12-31-20	SCR
138	Kresge (S. S.) Company	2,753,506	51,245,311	12-31-20	SCR
139	Cincinnati, New Orleans & Tex. Pac.	*2,728,635	N. R.	12-31-20	Poor's
140	Goodrich (B. F.) Company	2,711,287	150,007,346	12-31-20	SCR
141	Anaconda Copper & Mining Co	2,691,661	b71,589,791	12-31-20	SCR
142	Fairbanks Morse & Company	2,678,736	N. R.	12-31-20	Poor & Moody
143	Manati Sugar Company	2,668,131	N. R.	10-31-20	SCR
144	Honolulu Plantation Company	2,650,919	N. R.	12-31-20	Poor & Moody
145	Island Creek Coal Company	2,647,017	N. R.	12-31-20	SCR
146	Mack Trucks, Inc	2,644,014	34,071,366	12-31-20	SCR
147	Barnsdall Corp	2,615,414	7,105,715	12-31-20	SCR
148	National Fuel Gas Company	2,615,273	N. R.	12-31-20	SCR
149	Hawaiian Sugar Company	2,608,953	N. R.	12-31-20	Moody
150	Colorado & Southern R. R. Company	2,606,066	N. R.	12-31-20	Poor's

N. R.—Not reported. SCR—Standard Corporation Records. *—Estimated. a—Total operating revenue.
b—Gross revenue. e—Before depletion. f—Predecessor Corp. i—Before additional reserves. j—10 mos. ending 3/5/21.
p—Billings to customers.

[fol. 1079]

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
151	Underwood Elliott Fisher Co	$2,579,547	N. R.	12-31-20	SCR
152	American Brake Shoe & Foundry Co	2,568,013	N. R.	12-31-20	SCR
153	Torrington Co. (The) (of Maine)	2,556,963	N. R.	6-30-20	Moody's
154	Parke, Davis & Co	2,494,670	$26,475,715	12-31-20	Poor's
155	U. S. Realty & Improvement Co	2,487,803	5,040,099	4-30-21	SCR
156	Atlas Powder Company	2,467,095	24,393,569	12-31-20	SCR
157	National Acme Co. (The)	2,455,337	15,758,921	12-31-20	Poor's
158	American Bank Note Co	2,450,946	N. R.	12-31-20	SCR
159	Timken Roller Bearing Co	2,449,147	N. R.	12-31-20	SCR
160	Great A. & P. Tea Company	2,437,297	235,302,887	2-28-21	Moody's
161	Mergenthaler Linotype Co	2,430,732	N. R.	9-30-20	SCR
162	White Motor Co	2,410,014	51,998,122	12-31-20	SCR
163	Yale & Towne Mfg. Co	2,398,636	N. R.	12-31-20	SCR
164	Bliss (E. W.) Co	2,376,338	N. R.	12-31-20	Poor's
165	Hupp Motor Car Corp	2,366,389	26,263,007	12-31-20	Poor's '24
166	Union Elec. Light & Power Co. (Mo.)	2,342,423g	b9,882,232	12-31-20	Moody's
167	United Gas Improvement Co	2,303,876	N. R.	12-31-20	SCR
168	Pittsburgh Steel Co	2,300,745	27,483,107	6-30-20	SCR
169	Inspiration Cons. Copper Co	2,294,276e	10,633,707	12-31-20	SCR
170	Stewart-Warner Corp	2,290,195	N. R.	12-31-20	SCR
171	American Stores Co	2,249,454	103,059,303	12-31-20	P. & M.
172	N. Y., Chic. & St. Louis R. R. Co	2,248,851	a23,953,824	12-31-20	Poor's
173	Public Serv. Corp. of N. J.	2,218,408	N. R.	12-31-20	SCR
174	Babcock & Wilcox Co	2,207,803	N. R.	12-31-20	Poor's
175	General American Tank Car Corp	2,169,075	33,788,836	12-31-20	Poor's
176	Northern Central Railway Co	2,166,368	N. R.	12-31-20	Poor's
177	Coca-Cola Company	2,139,166	32,341,429	12-31-20	SCR
178	Electric Bond & Share	2,127,600	N. R.	12-31-20	P. & M.
179	American Cyanamid Co	n2,094,852	9,009,506	6-30-20	Poor's
180	Loew's Inc	2,057,432	21,060,672	8-31-20	SCR
181	Alabama Great Southern R. R. Co	2,056,963	a11,703,433	12-31-20	Moody's
182	Chile Copper Co	e2,056,405	N. R.	12-31-20	SCR
183	Worthington Pump & Mach. Corp	2,030,923	p27,924,745	12-31-20	SCR
184	Hart, Schaffner & Marx	2,013,055	N. R.	11-30-20	Poor's
185	Libbey-Owens Ford Glass Co	2,001,688	N. R.	9-30-20	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
e—Before depreciation. n—Before taxes. p—Railway by companies.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL., APPELLANTS,

vs.

SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 10, 1931

(36,382, 36,383, 36,384)

(36,382, 36,383, 36,384)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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[fol. 1080] It is expressly stipulated that the facts hereinabove set forth shall be received as evidence adduced by the petitioning defendants with the same force and effect as if put in evidence in this hearing by witnesses and documents, as indicated herein; provided, that the United States and the American Wholesale Grocers' Association and the National Wholesale Grocers' Association do not hereby admit the materiality of said facts; and provided further, that the right is hereby expressly reserved to the United States, and the American Wholesale Grocers' Association, and to the National Wholesale Grocers' Association, or any one of them, to produce testimony on the subjects of this stipulation in explanation of, supplementary to, or controverting, any of the facts stated herein.

[fol. 1081] (62) F. EDSON WHITE, President, Armour & Company, Chicago, testified:

1865 I have been in the packing business since 1891, with Armour & Company since 1895, and President since 1923. I am not affiliated with any other packing company except Armour and its subsidiaries. The meatpacking business opens with the reports of receipts of
1866 livestock at the terminal markets. All packing companies have facilities to gather that data and predicated upon what that evidence shows of the supply of animals available, plus what the situation is with respect to the merchandising of the product, the orders are placed throughout the organization for the purchase of animals. The livestock is bought in competition with a great number of other concerns who do a smaller business, and one that does a somewhat larger business similar to that of Armour & Company. Competition is very active. The market is very quick, and a difference in price as small as five cents a hundred pounds will frequently determine the sale of car lots or even train loads of livestock.
1867 These animals are bought and paid for and weighed all in the business day of the stock yard. Cash is paid on the morning after the purchase for such animals as have not been paid for during the day of purchase. Frequently, the weighing and the accounting is not

done in time to get through the banks and through the offices the checks on the same day. But there is a very large part of it paid for immediately after the tickets are registered at the scales and the bills can be made out.

In fact, in order to expedite the business, they do not go to the extent of making bills. The scale ticket itself, properly stamped and recorded by the scale master is evidence of a bill and is used as a check, and used as a bill going through the banks of the stockyard companies.

[fol. 1082] The history of this business has taught the livestock owner that when his animal leaves home it must find the shambles just as quickly as possible.

1874-75 The great bulk of livestock is sold the day it arrives, and seldom is any carried into the second day. It is not practicable for the shipper, if dissatisfied with the market, to ship it back to the ranges or farms, because of shrinkage in weight in transit and doubling or tripling of freight costs—losses that are beyond possibility of recovery. The shipper might try more than one market, if one is on the way to the other, for instance, Omaha on the way to Chicago; but if the Omaha price was not satisfactory he would certainly sell at Chi-

1909 cago. For these reasons it is practically prohibitive to withdraw any livestock left over at the market at

1910 the end of the day; and if there is a surplus at the end of the day after the market finally finds a resting place in the ideas of value between the seller and the buyer, then the stuff is cleaned up by the big packer. This is not always, nor, would I say, usually, at lower prices than have prevailed during the day; nor is it a matter of kindheartedness toward the producer. We have to meet the competitive situation and do not pay more than we have to pay for this livestock.

1876 Much livestock raised in its early life on the range, for instance, in Texas, is moved northward into the corn belt and sold on the public markets to farmers for further feeding and fattening. This may take from 30 days to three months more, or even up to a year. Such animals fresh from the range, "stockers" as they are called, are not fit for slaughtering and are not in

1875 competition for packer purchase. The next step in the development of the life of the animal from being a stocker is to what is known as a feeder. The

difference is that the animal is nearer maturity as a feeder.

1932 There is a stage in the physical development of livestock where it reached maturity and beyond which it will not increase in value in proportion to its continuing costs of maintenance. Within that fairly narrow time it must be marketed, if it is to be marketed to the [fol. 1083] advantage of the producer. What that range of time is depends entirely upon the condition of the beef animal when sent to the feed lot.

1934 A feeder may hold cattle 30 to 40 days after they should have gone to market without hurting them; 1933 or, on the other hand, after they reach the ripening stage, they may become overripe in three or four days. A mature animal is like a plucked rose. The bloom is on it; it is there and it is getting fat from then 1934 on. The more the farmer keeps it, the more he is out of pocket. This applies particularly to feed cattle. Range cattle can be held any time and any place without harm, so long as they are fed.

1877 Ninety-nine per cent of the livestock movement is from the west toward the east. Armour owns no interest in any cattle or stock cars.

1867 After purchase by the packer, the animals are killed in large measure within 24 hours, certainly within the second day. From 25% to 40% of the hog, depending upon demand, is sold fresh. The part that is cured takes from 15 to 90 days' processing to get it ready for market.

1868 In the beef, calf, and sheep business the turnover is very prompt and the animal is usually disposed of within 10 days of purchase.

1868 There is a very prompt turn-over in that side of the business and by reason of the perishability of the meat itself, it must move in a continuous flow to the market. There is not any such thing as holding back after the live animal has been slaughtered, more than just momentarily. We might try to hold up a day or two in the shipping of those animals because of congested markets, or for some other reason, but in the main the sheep, calves and beef reach the market and are disposed of within 10 or 11 days from the time they become the property of the packer.

[fol. 1084] In a business the size of Armour's, the plan of selling is through branch-house distribution.

1869 Branches are located in the consuming districts, each with its manager and complete staff, its coolers, and some with processing equipment for curing, smoking, pickling, etc. Branch-house volume will vary all the way from 2 to 20 cars a week.

1870 The branch house orders its meat according to what it considers the immediate and prospective demand.

Unexpected factors project uncertainty into the volume of business that can be anticipated,—for instance, a run of shad up the river at Baltimore or a sudden spell of hot weather at Washington; and this sometimes leaves unduly large shipments on our hands at the branch houses. Such factors interfere with the consumptive demand and yet we have got that flow of product constantly from the live stock producer, with the uncertainties of the live stock market in point of supply, and the uncertainties of the finished market in point of immediate consumptive demand.

1871 Supply is quite as uncertain in our business always as the demand is uncertain. But, in the development of what is known as the national packer, it has been built up, the business has been built up on the theory that he must give the producer a constant and ever ready market for his live animal. Therefore, the situation in the live market today is and has been ever since I can remember, that a man could always find a buyer for his animal. That puts a handicap, probably, on that side of the business, but the result over the years has been that these great businesses were built up on that theory and the producer has been building up his business, because he has had that market. Branch-house wholesaling is done with a crew of salesmen, usually within a radius of 50 miles. Territory beyond this distance from any branch house is usually served by route cars moving two or three times a week on schedule, loaded at the plant in station order [fol. 1085] with products that have been sold by our salesmen to the trade in advance of shipment. The trade in each town knows when to expect the car and depends upon it.

1873 The old practice of peddling goods from the car after its arrival has been discontinued. There is no control of the flow of live stock to the market. The movement of the live stock is entirely in the hands of the producers and so far as control is concerned, he controls his own product. But there is no control in the sense of the movement of the product. That is what brings such an uncertainty into the market. Last week, for in-
1874 stance, we had the greatest kill of sheep or lambs that was ever known in the history of Armour & Co., and yet we did not know the week before that we were going to have more than half the number that did appear and which we slaughtered and sent to market.

1877-8 Armour & Company owns no interest in Swift & Company, Cudahy Packing Company, Wilson & Company, or any of their subsidiaries. There are no agreements between them or any of them with respect to the prices at which finished meat products shall be sold or livestock purchased, or for the depressing of livestock prices or the manipulation of markets either for livestock or meat products; nor are there any such arrangements between Armour & Company or any of its subsidiaries and any other meat-packing concerns, to my knowledge.

1878 In 1923, Armour & Co. acquired the physical properties and assets of Morris & Co. During the war period, we greatly developed our plant capacity and in the shrinkage of business after the war, this great plant was operating on about a 50% capacity. Morris & Co. had had a similar experience. The need for more business to put through this plant was very apparent and the executives of Armour & Co. set about to find ways and means to get it. It was totally impractical to go out and make an endeavor to get or to pick up that business in the competitive field of business. That would be a very, very slow process and might never happen. The only thing to do [fol. 1086] was to buy out a going business and therefore we bought out Morris & Company, to add to, or that
1879 we might better use the facilties of Armour & Co.

1984 In the consolidation of the Armour and Morris business, our purpose of course was to minimize the cost of doing business as much as possible.

1984 In taking over the Morris outfit we found a duplication of facilities, as in towns where both Armour

and Morris had branch houses. In many instances we consolidated these, sometimes under the name of Armour, sometimes under that of Morris. This will explain to some extent the reduction in the number of Armour-Morris branch houses since 1920.

1879 The decrease in the Armour-Morris business since 1920 is due:

First, to the loss of $25,000,000 or $30,000,000 worth of business in unrelated lines which we had to give up on account of the Consent Decree.

Second, to our inability to hold all of the Morris business, in the face of our competitors' drive.

Third, and largest, to our inability to meet the situation we found arising in other lines of business, and in some instances in our own, among our smaller competitors not under our restrictions.

1880 While we have been able to carry on some business in unrelated lines due to suspensions of the Decree from time to time, it has been under the most severe handicaps of uncertainty.

1880 The severe handicaps that I refer to would be the uncertainty of time during which we could continue to handle that product, together with the fact that we were admonished not to stock up on the product and increase our inventories because we might, at any time, receive word that we would have to discontinue the handling of it. Any time we might get an order for a quantity of a certain brand such as California fruit, and the trade hesitated about buying it because of the uncertainty as to whether, after developing that particular brand, we could follow through and replace it.

[fol. 1087] To show the effect of the trend of chain development and the integration of the companies han-

1881 dling food products, upon our business, we must look first at the circumstances of time. First, there has been a constant and pressing need and necessity for shortening the cost of handling everything from the producer to the consumer. That being the back ground in business, the business man has sought ways and means to overcome his distributive costs, and that has developed an integration of businesses. We find that the background of General foods was Postum. Postum was a product to take the place of Coffee, and yet, in the development of General

Foods, with Postum as the background, they are not only selling Postum, but they are selling Coffee, and they are selling forty other articles—Dromedary Dates, Baker's Chocolate and Jello and prepared meat foods, and manufacturing sausage. That is just one development. But we see that development in practically all lines of business.

We see the leather manufacturer, the tanner, manufacturing harness and manufacturing shoes, and then we see him go a step further and retail the product that he is manufacturing.

We see Standard Brands organized. Here is the circumstance of the Fleishman yeast development, a great business meeting the same trade of some other line, and then with the expense of carrying that particular and individual line, they must get something to go on with it, and they add other products, or other things that will meet the requirements of the trade that they are calling on.

1882 The situation there comes back to our business, when we are handicapped by the fact of this restriction. We cannot meet that growing need and that pressure that is met by every other business of reducing [fol. 1088] distributive costs, which means reducing the price which the consumer has to pay.

1922 We consider such food integrators as General Foods Corporation in a very advantageous position, as compared with ourselves, in their ability to reduce fixed distributive costs and overhead by taking on new lines and handling them through the same selling force, the same delivery trucks, and the accounting through the same bookkeepers.

1923 Of course it is true that delivery costs depend on volume and not on the number of different items available to put into the truck, but the weight of other things delivered to a customer, such as a case of canned peaches, a case of canned string beans, a case of asparagus, would be equivalent to the total weight of the meat

1924 items—a box of pork loins, for instance, and a quarter of beef. Of course General Foods does not handle all of these; but if we had those items to go with the meat, we could reduce the fixed delivery charge of that meat 50%. Diversification of product is important only as it goes to the volume of business, as it carries the

overhead and the profit, whatever there is, and minimizes the expense per unit of what you are trying to do.

General Foods is an aggregation of previously existing manufacturing concerns who still continue to manu-
1925-6 facture in the same places. I am not familiar with their method of distribution, whether they ship direct from these factories to points of delivery or concentrate it in one huge warehouse before it is distributed.

1928 I simply mean to say that, if we could increase the volume of deliveries to our normal customers, we could do it at less cost per item. The volume of busi-
[fol. 1089] ness of these food integrators is immaterial. It might be one sixth of ours, yet the margin of profit is what counts. I consider that these integrated com-
1927 panies are in a more advantageous situation than we are, being restricted to dealing in one product going to one line of customers who handle other products but of the same kind meaning food. We handle
1928 several hundred different items but all of them are meat. If we were doing three times the volume of business as is done by integrated food companies, it is true that we have the advantage of reduced economies that come from a large volume of business, but carried out to one thing we might be better off doing a less volume of meat business but a varied volume of business.

1929-30 I do not know that these integrators go into retailing in the sense that we have been talking about, or that they retail to any considerable extent.

In spite of the handicaps imposed upon us by the Consent Decree, we have been able to sell non-meat lines in the last ten years with advantage to ourselves in competition with others who sell them. Otherwise there would be nothing to compel us to continue handling them. We have had a very limited profit out of any part of this business. If these handicaps were removed, we would be able to make it that much more profitable.

1882 The buying power of well organized chain organizations is a very definitely growing thing. The chain store in its development in the last ten years has got itself to a place where in many instances it can dominate the market. It might not dominate it thoroughly as to the definite thing of price, and yet it has a very large

influence on price. But it can dominate it as to terms, as to service, as to package, as to dozens of things. It all means, in the last analysis, added costs to the man who is selling the chain store or something taken out of his selling price.

[fol. 1090] I do not think the chains are able to do this more so with us than with other packers. I think they use it with everybody, large and small alike; but I do
1953 not contend that it is any more serious against us
1954 than against small packers or against other businesses doing a smaller volume of business, including these food integrators, big and little alike.

1882 When you go back to 1920, you take us back to the time of the war deflation and the circumstances that surrounded the picture at that time. Briefly, during the war, Armour & Company, in common with the larger packers, were in a situation where practically 65% of the meat food products that we manufactured and processed was taken by the Food Administration for the allied governments. It was necessary for us in the carrying on of this branch-house distributive organization
1883 to handle something else. We felt it necessary for us to keep our organization alive pending the cessation of hostilities, and since then we felt the necessity upon us, as food merchants, to provide, as Mr. Hoover requested at that time, other than meat for people to eat. So we developed into a business what we now know as the unrelated line business.

In 1920, at the close of the war and in the deflation period that we were in, we did not at that time see any change. We could not foresee what has happened in the last ten years. We were looking then, at that moment, toward getting back into the routine of business, of the meat packing business, and it looked to us as though we would get into normal times again and that our business was meat packing and we would be very happy to conduct ourselves as meat packers. We did not see then this great change that has come in merchandising. I did not see it. I am sure there was none of my associates who saw it. All we saw was the picture of normalcy of business of this country after the war, and the possibilities of a routine busi-
[fol. 1091] ness as was conducted prior to the war. That is what we were thinking of. We were not thinking of

any other thing. At that time, in 1920, we did not see this; there was not this development; no one foresaw this development in retail merchandising that has grown over the country in the last decade.

1884 Subsequent to the war I had visited Europe, and I recall very distinctly a conversation with Food Administrator Hoover at the Crillon Hotel in Paris in 1919, in which he prophesied that the great meat packers of America would be feeding Europe over the next ten years; that we would have not only the Allied countries that we had been supplying with meat foods as customers, but we would have the enemy countries. He used a figure, in millions of people, that was so big that I would be afraid to repeat it at this time. I am afraid no one would believe that was so.

1935 I assumed the situation to be that the herds had been devastated by the demands one way or the other of war; that in the countries over there, where they had always been more or less a factor, or at least they had raised enough products for their own home consumption, that they were totally without it. We were told before the close of the war, before the Armistice, that there was no meat at all in Germany; that we anticipated that it would take time to develop those animals and get back into production again, and it has taken practically ten years—we will say eight of those ten years for that to happen. Now, it is very clear that they are in full production of meat animals again on the Continent of Europe.

1936 We found ourselves at the close of the war with our warehouses filled with food products. We had followed the requests and demands of the Food Administration to pay a price which they had set for the live animal on the theory, on the promise, that they would take from [fol. 1092] us that meat food product when it was ready. In my conversation with Mr. Hoover in Paris in February, 1919, he first said, "What are you doing here?" I said, "I came over to open up the channels of business. We not only have got our cellars, and the aisles in our cellars, but we have got all the vacant warehouses we can find, full of pork products." He said, "Don't you worry. You not only will have the Allies to feed, but you will have the enemy country to feed, and you will have them for the next ten years." The authority of Mr. Hoover was good

enough for me at that moment, because I was a salesman looking for an order. His next point to me was, "Why don't you go ahead and ship?" My answer was, "Because the censor will not even let me send a cable; and if I could send a cable, there are no ships available." His answer was, "There will be," but it was the 1st of July before the first boatload of products reached Europe, by reason of the fact that the shipping was not available; it was being used in other channels. Mr. Hoover was very definite in his thought, and from the very facts that he had at that time, the condition within the enemy lines, as well as the conditions among the Allies, I think he was very sure of the fact that they would want that product.

Mr. Hoover told us that war-devastated Europe was practically out of meat products, and that was what we had been led to believe, of course, by the news from behind the lines during the war. The expected post-war foreign meat business did not develop.

1994-5 I accepted Mr. Hoover as a world authority on food conditions and I am sure, to the best of his knowledge and belief, he gave me the facts. I made no attempt to check up the facts he gave me.

1937 Mr. Hoover realized at that time his own great responsibility in the handling of this great food problem, not only from the point of view of the persons who [fol. 1093] had to be fed, the enemy and the allied countries, but also from the place in which he found himself from the producer of food whom he had done everything to and with and encouraged in every manner to produce this vast quantity of food, which had been done and which was then ready for market.

1938 I had the greatest anticipation of the food market of Europe that I have ever had of any unknown market in my lifetime.

1944 I took the opinion of Mr. Hoover as an authority upon the world's food supply and I assumed that because of the devastation of the herds in the warring countries, that that was the place we would get our business from. Naturally, in the demand of the war, they had reached out even to the countries that were not in battle, or were not on either side, neutral countries, for supply, and my assumption was that those countries had been de-

pleted the same as the warring countries had been depleted.

1885 There has been, and there is going on at the moment, a greatly increased production of live animals in all countries of Europe, with the possible exception of Great Britain, where they do not increase materially within themselves. In their Empire, in their Colonies, they are increasing. Germany, Holland, and Denmark have all greatly increased their supplies of hogs in the last few years.

1939-43 The yearbook of the Department of Agriculture for 1930, which is here shown me, shows, pages 824 to 866, the average annual herds of livestock on farms in various parts of the world for the pre-war period, 1909 1913, and for the post-war period, 1921 to 1925, as follows:

[fol. 1094]

Territory	Cattle		Hogs		Sheep	
	1909–13	1921–25	1909–13	1921–25	1909–13	1921–25
North America and West Indies	74,000,000	86,000,000				
United States	56,000,000	65,000,000				
South America	80,000,000	101,000,000				
Europe (exc. Russia)	103,000,000	98,000,000	92,000,000	89,000,000	234,000,000	223,000,000
Russia	60,000,000	57,000,000				
Germany	18,000,000	16,000,000				
France	15,000,000	13,000,000				
Africa	30,000,000	46,000,000				
Asia (excl. Russia)	195,000,000	235,000,000				
Oceania, Australia and New Zealand	11,000,000	13,000,000				
World Total	458,000,000	642,000,000	260,000,000	260,000,000	687,000,000	633,000,000

1945 The figures contained in the foregoing table jump from 1913 to 1921. In the interim, we had the war. Prior to the war, we had the natural development of farming and herding, and we must have had an increasing herd from that last figure that is shown there, naturally.

This buying power of the chain store is exerted
1885 both in prices and terms. A large buyer, from where he sits in the market place, has a domination that permits him to fight down the price, which he uses to insist on terms and service beyond what has been ordinary and customary in the usual handling of our business.

If a concern such as Armour & Company gets to selling an appreciable percentage to one customer, the effect would be a very serious one. If we got to a position where we depended on any one customer for a very sizeable part of our business, certainly, if we should find the situation some day that our biggest customer, because of some incidental thing that might happen between his organization and our [fol. 1095] organization, had decided that he would dismiss us from serving him, and that amount of product should back up upon us to sell in other directions, we would find a very difficult situation.

1886 Processing is really the productive end of our business so far as profit is concerned. We get our profit through the processing of our products. And to the extent that our customers take over the processing, we miss that profit, and we find, in this growing development of this great merchandiser called the chain store, that he is taking over, to a greater or lesser extent, these functions which have been a part of our business, and produced the greater portion of our profits. The chain store today will buy meat in pickle, or may buy it green and pickle it themselves. If it is bought in one way or the other, it is shipped to their warehouse, and they do the processing. They smoke the hams and boil the hams. In some instances they even have gone so far as to manufacture sausage. Those are functions that properly belong to the packing business. At least, that is what the packing business has been built up upon, and when we find that sort of a development, we are denied a very large part of our profits in the handling of our business. Chain store buying was not noticeable in the meat packing industry ten years ago.

1887 In the present situation, when our salesman visits a market, his first question, and probably his only

question, is "Do you want any meat today?" If the answer is in the negative, our man is through, then, so far as that call is concerned. But if he had the opportunity of going through, as many of his competitors do, a line of food products, and offering them for sale, the chances are that he would get some part of that man's business. On the other hand, if he sold him a small quantity—or any quantity, small or large—of meat foods, and he had other [fol. 1096] products to carry with it, that would help carry the overhead of that man's expense and help carry the overhead of that branch house. The same bookkeepers and the same manager, and the same chauffeur would handle that meat, without any additional cost, you might say, and it would reduce our cost of doing business and would give us greater opportunity for profit. It would be a means to an end that this business is unable to develop because of the restrictions upon it, but which we find is developing in almost every other line of business in the world—I mean developing to the point where a fixed thing, carrying a fixed overhead and fixed expense, gets beyond profit.

Therefore, people go into the other line, or some
1888 comparable line. We are dealers in meat foods in this great packing business. It would be the most normal thing in the world for our salesman to carry a line of food, including meat, and not simply the single item of meat. If we were permitted to do that, it certainly would make an entirely different picture of the merchandising problems which confront us, and which always reflects back to where we start from.

With this overhead, with this maintenance of a one-line business, even in the vast weight and the vast quantity we do business, we find the severe handicap of growing costs of distribution and salesmanship, all of which is a part of distribution, but that must reflect itself in the price the consumer pays when he eats that meat, or buys it in the market place. It must reflect itself when we buy the live animal from the producer. So that if larger profits than those at present were available, after a normal return on capital invested was passed, the natural result would be that the rest of the benefit would go to the consumer on the one hand, and the producer on the other.

I think there are enough salesmen in the field al-
1917 ready for meat products, and that the field is adequately canvassed both for them and for non-meat

products. There would be no object in doubling the number of salesmen. While I have no accurate knowledge as to this, I should say we now handle a couple of hundred [fol. 1097] different items in our meat lines, that is, items such as we would put down on our order list, and that meat lines would constitute from 25% to 35% of the normal volume of business of the combination meat and grocery store. I think any wholesaler competes for 75% of that business.

I do not know whether or not there is any other food manufacturer that competes for so large a portion of the normal combination-store business, but I do not think that is comparable. You are taking a division of a man's business which is meat and which has bacon and lard and sausage and boiled ham—forty different kinds of sausage and two or three different kinds of cooking fats and four or five different kinds of roast meats and four or five different kinds of frying meats. You can not measure that as a division of his business against General Foods which might sell him perhaps twenty articles.

The retail store does not sell you a can of fruit every day in the week, but it does sell you a piece of meat every day in the week—not a piece of sausage, but some kind of meat. It is true that the normal person eats a certain amount of vegetables every day, and a certain amount of fruit; but the buyer does not take canned fruit out of the place on the day he takes fresh fruit, and the dealer himself did not buy his canned fruit and his fresh fruit from the same place.

In our meat lines the average delivery to a regular dealer-customer is about 126 pounds a day, and it has fallen to this from 157 pounds ten years ago. This is only an average of store-door deliveries and does not include car lot business to chain stores, so that it is not a measure of the volume of business.

Armour & Company has 80,000 stockholders. It has paid no common stock dividend since 1926, but has paid dividends on its preferred stock, which is [fol. 1098] cumulative, at times out of surplus during the past ten years. It is not customary and is bad business policy to pay common stock dividends out of surplus, and we have not done so. Since 1926 our earnings have not been sufficient to pay dividends on common stock.

Our low profits are not due to waste in our operations. Indeed, our productive costs are less today

than they have been at any time in the last ten years, and our administrative charges are running $2,000,000 a year less than for Armour and Morris combined prior to the merger. We have 64,000 employees.

Armour & Company maintains a pension system under which male employees are allowed to retire at the age of 65, after 25 years of service; and women employees are allowed to retire at 55, after 20 years of service. The company also has group insurance for its employees. The relations of Armour & Company with its employees are the most harmonious. We have in our organization, in the operating side of it, what is known as the plant Conference Board, a board which is elected by the employees, and on which there is representation from the management.

1892 That was organized right after the war, and since this organization there has been no single instance of any differences that have had to be adjusted outside of that board. On two occasions in that time that board voted for a decrease in pay for themselves, and on one occasion they voted for an increase in pay. The departmental management and employee representation on that board is equal.

We have no requirement to the effect that any customer must buy exclusively from us or must buy one line of our products in order to get another

1893 I know of no business that is more highly competitive in trying to get the customer's dollar than the meat food business is. We meet everywhere, at every [fol. 1099] cross-roads where we do business, some sort of competition. I do not believe there is a retail dealer anywhere who has not the opportunity of buying from anywhere from two to thirty salesmen per week, a product that we sell. We not only meet the competition of the other slaughterers, but we meet the competition of the jobber, who buys in carload lots and cuts up the product and distributes it. We meet the competition, in many places, of the farm slaughter, which happens in the fall of the year and through the winter-time. There is no place that I know of where we do not meet the most severe competition. I do not think there is any industry that has more severe competition in all its ramifications in every direction.

There is a constant effort on the part of many to get that dealer's dollar.

1894 Referring to the direct purchasing of live stock, I would say that in the State of Iowa, at practically every cross-roads in the State, there are buyers for hogs. Iowa is the largest State in the Union in the production of hogs. The hog population is estimated at about 14,000,000. We have places in Iowa for the purchase of hogs direct from the farmer or from the shipper, that we call concentration yards, the meaning of the term being that the yard is established there, and the farmer brings the product in, largely in trucks, from all directions, to that market, and we assemble the animals in carload lots and ship them to the packing house destination. Largely those hogs moving out of Iowa go into Chicago, and in some measure they go into Kansas City and East St. Louis. The hog population of Iowa is larger than that of any State in the Union. It produces annually a hog crop of fourteen million.

1895 We much prefer to buy on the public stock yards in what are known as the terminal markets, because [fol. 1100] the stock is on hand there. We know what selections are to be made, and we know on what basis we can purchase. When we undertake to buy in the country, we buy what is offered. There is an uncertain supply. There are days in weeks when there are not any hogs at certain places. Many of them only receive hogs on Friday and Saturday of the week. It means a big expense to keep men there. It means a great effort to keep fifty, sixty or seventy places organized and informed, and it means a great expense to keep the movement of stock out of those places into the terminals. Direct marketing, as distinguished from public stock yard buying, increases the cost of doing business. Direct marketing has grown up as a development of time and changing conditions; primarily because others of our friends have gone into the country to buy stock and arrested the movement of that stock to the market. Together with that has been the de-

1896 velopment of the Iowa packers into very large units. Years ago they were small and did not interfere much with the movement of live animals out of Iowa, but today they are very formidable competitors of ours. In order to get a selection of stock we have to go to the place where the product is offered for sale. The farmer, in this

time, has found that by selling his stuff locally, or at one of these concentration markets, he does two things. First, he saves himself the shrinkage on the animal to market, and the expense of the market toll on it—meaning the commission and yardage charges, which are made against him; meaning also the feed bill, if he finds it necessary to feed. He saves, secondly, his own time. At all these places in Iowa the animals are largely brought in by truck from a radius of 10, 15, 20 or even 50 miles. A man can make his haul, get his money, and get home the same day. It is quite an item to him. It is a changing thing. It is something that the larger packer has felt himself obliged to adapt his organization to, but it is an expense. It is not as good a plan, from our point of view, as the plan that had been developed over the years of buying in the open market [fol. 1101] place at the terminal markets.

1915 In the early days there was never any thought of anything except going down to the stock yard to buy your products; but in the last ten years these great packing houses developed and have arrested the movement of the large quantities of hogs. I venture to say that there has been a decrease constantly over the last ten years of animals offered for sale in very growing proportions to what it was ten years ago. We felt that it was necessary to maintain that great Chicago plant, in which we have probably 35 millions or 40 millions dol-ars invested. With a diminishing live stock market we would have to go to where the live stock was. That is why we went into Iowa, to the concentration markets.

1896 I do not think it is in the power of any packing concern such as Armour or Swift, or any group of 1897 them, to put efficient competitors out of business, because in this free and open country of ours a man could take care of himself.

1950 We have acquired various competitors in the course of our development. Among these I should consider that Morris & Company was quite efficient until they met the post-war crisis; also, going back into the history of previous acquisitions, the National Packing Company, when it was organized, was organized of efficient concerns.

There is such an open field for a competitor to
1897-98 buy his product in, and there is such a big field for him to sell it in, that if he is efficient and able, he will take care of himself. No group of people could ever concentrate sufficiently to control the supply of live stock in this country, and no group of people could ever concentrate sufficiently in this country to control the selling of meat food products, or any other kind of food products. It would be totally impracticable for them to do it. A monopoly of the food industry of this country is totally impossible. If it were ever undertaken, the 6,000,000 farmers [fol. 1102] of this country would be in the food business overnight—in the distribution and sale of it, if nothing else. There is no such thing as the maintenance of artificial or unreasonable price levels as to the products Armour & Company deals in, now in operation or contemplated and I do not think it could be done because of the very nature of the business.

1898 First, the perishability of the product we have to sell. If we undertook to maintain a price beyond the price level, or the price idea of the buyer, and we held our stuff, every day we held it we would get farther away from the intent of that price, because of the deterioration that would be going on in the product. There is no price better, in the movement of meat foods, than the price obtainable immediately on the offering of that product for sale. That is particularly true in the branch house, in the terminal where a product is sent. The meat comes out of the car. The fresh meat is in bloom, as we call it in our business, and it has a satisfactory appearance of freshness. But each succeeding day, as time goes on, it loses that to some degree, and at the end of a week it is totally devoid of any bloom. The same thing applies to smokehouse products, in the matter of ham, bacon and sausage. At no time is it so attractive in appearance and ready for sale, than immediately after it comes out of the smokehouse. To the extent that it is permitted to meet the elements and the changing atmosphere in the very house it is in, and the changing temperatures in the movements from the house to the man's market—all of that has the effect of deterioration in its appearance and in its value. Therefore,
1899 at any time anyone undertook to maintain a price that was artificial, and that was beyond the imme-

diate trading ability to get, he would only sink himself. It would be suicide.

Consumer demand for meat products rises and falls with meat prices.

[fol. 1103] The high price of livestock a few years back came from diminished herds, due primarily to de-
1901 flation of prices after the war, the high cost of breeding cattle, the fact that herds had been killed off to a minimum, and that many feeders and producers were put out of business. It has gotten around to normal only recently.

1901 Armour & Company does not control, by stock ownership or otherwise, any concerns, organizations or corporations except those that are known as its subsidiaries. It has no stock or other ownership interests in any newspaper or market journals or terminal railroads.

1902 When Armour & Company sold its stock interests in various stock yard companies it received a very substantial cash payment and about 35% of the common stock of General Stock Yard Company. The only owner-
1904 ship or interest Armour & Company has in banks consists of a 53% interest in the Ft. Worth Stock Yard National Bank, a 32 or 33% interest in the Denver Stock Yard National Bank, something less than 100
1905 shares in the Sioux City Stock Yard National Bank and 20 shares in the St. Paul Stock Yard Bank. The latter two interests do not represent any appreciable amount of the total capital of these banks.

1906 The large packers operating on the public yards take the flow of the market, on the theory that we must give a constant every-day market to whatever the producer sends us. It was primarily this policy in the early days that made the packing business possible; but it does result in uncertainty of supply, varying at times as much as 100% from one week to another, greater in hogs than in cattle, but considerable in all species. We may have in Chicago, on a Monday, 65,000 hogs, and then within a week, on Monday it might be 35,000 hogs. Another week it might well be 90,000 hogs. As a result, the large packer at times has a supply greater than his immediate needs, [fol. 1104] and, if unable to find a market, must find ways and means of carrying over the surplus. In hogs, the

answer is in the direction of curing and freezing;
1907 in beef and lamb, of dropping the price to a point where they will take it, for there is little of the latter that does not go to the market within ten days. We then have to watch for the opposite situation when we have an opportunity of selling this frozen carcass which we have been carrying perhaps from two months up to a limit of six months.

1908 Gluts first appear in the livestock market, causing a drop in price. then, in the case of lamb and beef, we start to advertise them as sheap foods; and, under the pressure of advertising and salesmanship in getting hotels, restaurants, and dining cars to serve them every day, we are able to get the glut moved out into consumption. In the case of hogs, the surplus would go to the freezer and bide its time for the market. The glut backs up into the packing houses but never onto the retailer. He buys only what he can sell.

1946-7 For the past two years we have been carrying on experiments in the quick-freezing process, involving neither the double-plate nor the single-plate process. We have not yet undertaken any patents and do not care to disclose the method; but we have not gotten to the place where we are offering meat of that character to the public. The developments so far made would enable us to meet the competition of any food that is now prepared by any method that is now on the market, when and if we want to do it. It will cost a very substantial figure to equip our plants for this, handling the volume that we do, and one of our purposes is to find a short cut on the cost.

1948 As quick-freezing requires lower temperatures,
it requires more power, and the more power the
1949 greater the expense. At present, meat foods are carried through the packing house at from 34° to
[fol. 1105] 38°. Quick-freezing requires from 10° to 50° below zero, depending on the product.

1954-5 The problem of surplus facilities is more serious with us in proportion to our business than with the smaller packer, because of the greater fluctuation in our kill, which may vary in our Chicago plant from 1,000 to 4,000 cattle per day, or from 5,000 to 18,000 hogs per day; and because of the need for capacity to take care of that

situation. This condition has always existed and does not represent a change since 1920. The new conditions that affect that question are the chain store development, reaction from war conditions, and the development of competition in the business. We have more packers today than we ever had.

1956 While all productive units, large and small, ex-
panded to meet war needs to the extent of their
1957 capacity, as we did, most of them did it with govern-
ment money. We did not ask for any, because we felt we were able to take care of ourselves. Aside from the present depression, I will not say there is an over-capacity of plant in the industry, if we could go back to that great heyday of "prosperity" before the fall of 1929.

1958 We cannot adjust our prices so as to distribute any surplus capacity of our own over the industry generally. If we could, it would not be a hard matter for us to earn our dividends. A quarter of a cent per pound more on the meat food we handle would amount to $9,400,000 a year extra, and it would pay the preferred dividends; but the competitive situation, both in buying the animal and in merchandising the product, is such that we have been unable to get that narrow margin. A mere
1959 quarter or half a cent change in price is not going to change the demand for meat. It would take
1960-0 a 15% or 20% drop, or even more, to influence substantially the volume of consumption in a period of surplus. By and large, the ordinary retail business does not change its prices up and down with varying changes in the wholesale market. The chain store does it much better, and I believe that if we were in the retail [fol. 1106] business the retail price levels would be kept nearer the wholesale market than at present or than within the last 15 or 20 years; but in order to get these surplusses resulting from gluts in the livestock market moved promptly through to the consumer, it would take this 15% or 20% reduction in retail prices to effect any substantial difference. The chain alone is not sufficient to do it, because it is a matter of volume as well as price.

1963 The independent retailer's business is built largely on credit and telephone orders, a different clientele largely from that of the chain store. They do not go to

his store to shop or follow market prices closely.

1964 In order to get the desired results in this prompt movement through price adjustment, it would require us to retail our meats to a greater or less extent in substitution for the independent retailers now handling them.

1966 I do not know the unit costs of any of the small packers, but I will measure those of the great packer against anybody's in the production end. But in selling, the large packer's unit costs are greater because of his large branchouse investment and personnel. The small packer has a plant created to a certain capacity, without branch houses, and using motor truck delivery. He sells locally or within a few hundred miles and has practically the same quantity day in and day out. While he competes with us only in his own locality, we compete with the local packer everywhere, practically.

We have this great arm of our business called the branch house division, which represents investments of millions of dollars, which represents a very large personnel. We pay taxes locally, we pay telephone bills and insurance and a hundred other items that he escapes from entirely

1967 when he goes to sell his product. If I had a small packing house out in Iowa and I wanted to sell a carload of meat to a chain store in Philadelphia, I do not [fol. 1107] have to put a branch house there to do it. I can do it over the telephone or by telegraph. But, in the nature of the development of our business, which is on a different plan and method than his, we have got that created organization, not to take care of the chain store, because when it was created, there was not the chain store buyer; but it was created to take care of what we now term the independent or small buyer. That is all there. It has never changed. We cannot stop. We can not quit. We have closed up branch houses because of these changing conditions, but still we have got 380 of them left, scattered all over these United States.

In order to handle the product of 16,000,000 head of live stock, which we kill, in a year, we have got to have, we have got to get that, and we have not reached the place in the development of this business where the chain store is the bigger buyer. Still in our business 85% of our trade is

the independent buyer, and we have got to be in
1976 A a position to take care of him. We have got to be in a position to take care of it. Our business is built up for 100% of that kind of dealing. Now we have the development of the chain store and the big buyer, and the small packing house out in Iowa without any expense beyond the telephone or telegraph, or perhaps one salesman. He can sell a carload over the telephone.

1967 Of course between these two extremes, there are other packers, besides the big four, that have branch houses, but none of them has over four or five in the whole United States, and yet they have a business of $15,000,000 or $20,000,000 a year. Their business was not built on that basis, but on the basis of local business, car lot quantities, telephone orders, etc.

1969 Our business is practically the same size as that of Swift & Company, differing only $31,000,000 out of some $900,000,000 for 1929. I know of nothing that makes it impossible for us to operate as economically as they, and have no explanation for the discrepancy in our profits of $9,000,000 as against theirs of $13,000,000 for that year.

[fol. 1108] Armour & Company is a manufacturer and wholesaler. Our function ceases in the wholesale
1970 business. We do not go beyond that. I do not think there is much difference between our business and that of most other manufacturers today. I think there has been, in the last ten or fifteen years, a growing development of the manufacturer wholesaling his product, of all characters. I think further than that, in the last five years, there has been a growing development of the manufacturer not only doing his wholesaling, but going a step further and doing the retailing. That is not confined to the food business alone. We can witness that in a dozen businesses. We have the hosiery manufacturer with a retail hosiery store. We find the leather manufacturer with a shoe factory, and a retail shoe store, and selling, alongside of his shoes, hosiery and other items. We find the largest sporting goods manufacturer in the United States, Spalding, not only manufacturing the goods that he sells, but he is also a retailer. Spalding also jobs.
1971 He performs functions of a jobber and a wholesaler, but still has representation, probably in the same

town where he is doing wholesaling, in the retail field.

I would not say that in the meat line the wholesale business, as distinct from manufacturing, has been negligible, I think, if we dissected our business and took what we call wholesale business to a jobber, to some one who does something more than just buy it as a retailer does, we would find it was a very substantial item in the conduct of our business. For instance, we have innumerable customers who buy carloads of beef, sheep, sweet pickled hams, and then go on with them further, from there on. It is quite a sizeable business. They sell in turn to the retailer. There is a very sizeable business in the United States, in meat lines, in what we call jobbing.

1971-2 While we do quite a sizeable jobbing business, perhaps $100,000,000 to $150,000,000 a year out of our total branch-house business of around $600,000,000, the great bulk of our business goes and has for years gone direct to the retailer.

[fol. 1109] "Q. Are you able to tell us anything as to what the definite plans of Armour & Company are, or any
1972 of the plans of Armour & Company are, as to engaging in the retailing of meats and groceries in case
1973 they are given liberty to do so by a modification of the consent decree?

"A. We have no definite plan.

"Q. You have no definite plans?

"A. No, sir.

"Q. You do not know whether you are going to use it, or not?

"A. I want to be free to meet the conditions as they develop. I want freedom of action for this business, and when I have it, I can meet the conditions that surround me, and that I have to surmount in the conduct of the business.

"Q. You can not say, then, that conditions at present are such that it is necessary for you to go into the retailing of meats and groceries?

"A. I would say that the trend of the times is such that we may be forced into the retailing of products at any time.

"Q. That necessity may develop?

"A. It is imminent now, from all the signs of the times.

"Q. If that necessity develops, if it does not now exist, then it is your intention to do so, is that correct?

"A. It is my intention to meet the situation as it develops.

"Q. But it has not developed today?

"A. I say it is imminent. I say, in the situation surrounding the conduct of business today, something must be done to unfetter this great business called the great meat packers, so that they can meet these growing conditions. The very fact that we had the privilege or opportunity of going into the retail business without restriction might remove the necessity of our ever having to do it,

1974 "Q. In what way might it do that?

"A. Well, if you have somebody in a situation where he can never get up to you, you have an advantage [fol. 1110] over him. As I regard the situation today, in the business of retailing meats, our competitor has the advantage over us. Every one of the packing businesses we meet in competition with us has an advantage over us in the conduct of their business, because they are unfettered and they can do anything they want to. As I regard it, the wholesale grocer himself has a distinct advantage over Armour & Company, over Swift, or over Wilson, or over Cudahy, because of the fact that he is unfettered, and he can go as far as he wants. He has gone far afield in the last ten years, from what was the wholesale grocery business. We see that everywhere. We see it in every line of business. The very fact that we are restricted, Mr. Teegarden, is an advantage to our competitor as well as to our buyer, to our consumer, to our ultimate customer.

"Q. Could you illustrate, by some description of a definite line of procedure, as to how the mere possession of this liberty would give you an advantage, or enable you to act advantageously without actually using it?

"A. I can conceive of a situation developing around our business where we have a customer of very large proportions, with whom we are dealing in millions of dollars of business. I can conceive of his buyer and my salesman getting into a situation of antagonism one with the other, and of getting notice that that man would not buy any more products from this great house of Armour & Com-

1975 pany, because of some little incidental thing. I could not conceive of that ever happening if that big buyer thought that there was an opportunity, because he or his people refused us his business, for us to go into the retail

business. I can not conceive that he would reach that conclusion. I think he would find a way to do business with us.

"Q. In other words, if you were able to hold this privilege of retailing up as a threat against him?

"A. I think without question, Mr. Teegarden, if we had [fol. 1111] the privilege of an unfettered business, if we had the privilege of meeting any situation that would be created in this great competitive field of food merchandising, we could better serve the ultimate consumer; we could better serve the buyer; and we could conduct our own business on a better margin of profit."

1995 "Q. Why has Armour & Co. no definite plan with respect to retailing?

"A. I have never felt in the situation as it now stands that we could serve any purpose by making any definite plans.

"Q. Has Armour & Co., or have its directors, laid out any plans in anticipation of the Court's decision in this matter?

"A. No, sir. We have never discussed it as a matter of fact, at directors meetings.

1989-90 In addition to strictly meat lines, we handle butter, eggs, poultry, cheese, and soaps, and other products of that nature. We handle 100,000,000 pounds of butter annually. We have been handling some canned fruit and canned vegetables; and coffee, chile sauce, and spaghetti to a very limited extent. We handle California fruit on consignment in behalf of the California Cooperative Canneries.

[fol. 1112] We have competitors in the processing of meats and the slaughtering and processing of the animal,

1975 who are in the retail business and are developing the retail business. We see growing evidence that they are going into it. Frey, out on the Pacific Coast, sells 40 per cent of his output at retail. Hy-Grade here in Brooklyn and New York, is extending its operations. We also see the chain store taking away from the packer other functions than that of retailing. It is fast taking away the function of processing. The A & P have 22 warehouses in which they do more or less processing. Kroger has warehouses. Others have various kinds of manufacturing today.

1977 I think by and large we could retail our meats more cheaply than the independent retailer is now

doing, but I do not think we could take the place of the efficient family retailer, not that it would be impossible for us to conduct a service of such personal and select nature as some of these independent retailers do, for to that I do not agree, but it would take 25,000 retail markets to handle the output of Armour & Company in the ordinary way. While among these we might have a market like that here and there, I conceive that the fellow who has built up his business with a knowledge of the locality, the families he serves, and the types and classes of meat they use, would still
1980 be there. While we would draw our personnel from the local communities and could obtain personnel that could offer this same personal contact, we could not do it to the exclusion of the other fellow.

1980-1 Together with the rest of my family, I own stock in the White House Investment Company, a family investment company which in turn owns stock in the Waugh Equipment Company. I am not an officer or director of [fol. 1113] the latter company. I think none of the Armour family are interested in White House Investment
1982-3 Company except A. Watson Armour, who is one of our directors but not directly connected with the business. He has some stock in the White House Investment Company. Mr. Ellis, Vice President of Armour & Company, and Mr. Reynolds, one of our young men, are also interested in the Waugh Company; also Mr. Arthur Meeker, who is a director of Armour & Company but not an officer.

I know very definitely that the Waugh Equipment
1983 Co. is not controlled by stock ownership among the Armour personnel, officers or directors.

1983 The White House Investment Company also has an interest in the Lowden Packing Company, of Terre Haute and Evansville, Indiana, which is engaged in the canning of tomatoes and pork and beans.

The table entitled "Summary tables of foreign
1985-6 commerce, Principal domestic commodities exported during the fiscal years 1910 to 1914 and calendar years 1925 to 1929," issued by the Department of Commerce, shown to me on the witness -tand, shows average annual exports of packing house products, including lard and other edible fats and oils, 1910 to 1914, as 1,225,873,000 pounds; and for the years 1922 to 1926 an average of 1,753,-

000,000 pounds; for the year 1925, 1,499,000,000 pounds; for 1926, 1,300,000,000 pounds; for 1927, 1,200,000,000 pounds; for 1928, 1,200,000,000 pounds; for 1929, 1,382,000,000 pounds. That is, for each year since 1925, except 1927, the exports were in excess of the average from 1910 to
1992 1914. The dollar sales of Armour & Company for 1929 were larger than those for the six or seven preceding years.

The following advertisement of Armour & Company appeared in the Journal of Commerce for Tuesday,
1992-3 September 16, 1930, over my facsimile signature, and I think correctly represents the situation:

[fol. 1114] "The good old days——

"Any one over 35 can remember 'the good old days' when a quarter's worth of beefsteak was enough for the family. But let's not forget that quarters in those 'good old days' were harder to get, and meat a Sunday dish rather than an every-day necessity.

"To day we have an ever-increasing buying power with higher wages and measures taken to prevent slumps and lay-offs. The 'real' wage of the workman was never so high. And it continues to mount. Meat is today a regular article of diet in almost every home; and today's 'real wage' buys more meat than the former wages bought.

"Under these new conditions the stability, the earning power and the prosperity of a great packing house like Armour and Company are far more certain than even in previous days. For Armour's market contains more people, buying more often. And Armour's market, including the entire nation as it does, can't go 'broke.' Armour's past is but an indication of the new Armour and Company's greater opportunities.

"F. Edson White, President Armour and Company, U. S. A."

1996 Armour & Company carries an average total of something over 200,000 customers. I cannot say how many of these are chain stores; they all deal with us and their combined business constitutes from 15% to 17% of our business.

(63) JOHN M. CHAPLIN, Comptroller, Swift & Company, Chicago, Illinois, testified in substance as follows:

1997 I have been with Swift & Company for forty years and Comptroller for the past two years. Financial [fol. 1115] data with regard to sales, profits and number of branch houses and such other financial and economical data come under my Department.

Petitioner's Exhibit 136 is a statement of annual sales and earnings of Swift & Company from 1920 to 1929,

1998 prepared from this data. Red figures indicate losses.

Petitioner's Exhibit 137 is a statement of our domestic sales of edible products for the year 1929.

1999 This embraces all products for human consumption: food products, butter, eggs, poultry, cheese, lard

2000 compound and salad oils; but does not include canned vegetables, as we do not handle any.

Petitioner's Exhibit 138 shows a comparison of

2000-01 Swift & Company's sales of butter, with the estimated total butter production in the United States as given by the Department of Agriculture for the years 1920 to 1929.

Petitioner's Exhibit 139 is a similar comparison between Swift's sales of cheese and the total United States consumption for the same period.

2006 Petitioner's Exhibit 140 compares for the same period Swift's sales of dressed poultry with the esti-

2007 mated total of dressed poultry raised in the United States, and Petitioner's Exhibit 141 does the same thing for eggs.

2008 Petitioner's Exhibit 142 gives pound volume sales of Swift & Company from 1920 to 1929 in meat products, oleomargerine, lard substitutes, and hides.

2040 This is only a partial list and does not include certain other products sold, i. e. soap.

2009 Petitioner's Exhibit 143 shows for the same period the number of branch houses, refrigerator cars and

2058 car routes owned and operated by Swift & Company. The number of branch houses have since decreased from 431 to 419. We lease quite a number of cars in addi-

[fol. 1116] tion to these, so that the total cars operated for 1929, for instance, both owned and leased, numbered 6,641.

2045 Petitioner's Exhibit 144 shows the annual dollar

2009 volume of our branch house sales in the United States. The increase in the number of branch houses and branch house sales were shown in spite of our accumulated surplus branch house facilities, because we
2043-4 have had to serve smaller and smaller towns to get our business. Before that, we partially served these towns through route cars or trucks or perhaps a refrigerator car route with a sub-stop en route to its main destination. We can do this at a carload rate to the farthest destination with stops at certain intermediate places for partial unloading. There is simply a service charge for stopping the car.

2044 By establishing a branch house in a particular neighborhood we get a larger amount of business than we can secure by just having a salesman there. The branch enables us to render better service and to follow the trade closer and get a greater volume of business out of the same population.

2010 Petitioner's Exhibit 145 is a statement showing in detail the cost of branch house operation, volume of sales tickets, number of branches opened and closed and in operation for each year from 1923 to 1930. The first column, headed "Volume," gives the weight in pounds of all products handled by these branch houses. The totals in succeeding columns all relate to business done in these branch houses, while the column headed "Per CWT" represents the immediately preceding figures divided by the hundredweight in the weights shown in the first column. "Rent" represents a charge which we set up for the use of branch houses in order to arrive at the cost of our branch house operations, and is valued at six per cent on the investment in land, buildings, and machinery, plus depreciation, a charge varying from 2% on fire-proof buildings to 5% on a frame building, and 10% on machinery. [fol. 1117]

Where we lease branch houses, the rent figure repre-
2012 sents the amount actually paid.

2013 BH General Expense means branch house general expense and represents the general administrative expense of operating the branch house.

"Delivery" covers the cost of automobiles, trucks, horses, and wagons and any other delivery equipment used in
2013 connection with branch house operation. "Refrigeration" covers the cost of operating branch house re-

frigeration machines, boiler rooms, light, etc. "Repairs" covers the actual expense of keeping the premises and
2014 equipment in good shape. "Suspense" represents amounts written off for bad debts, which it will be noted, has increased since 1923. "Depreciation" covers depreciation on movable equipment, such as benches, tables, and movables carried on their own books; while "Other Expenses" cover telephone, telegraph exchange, and
2015 everything else not elsewhere included. "Pounds per ticket" as shown below is obtained by dividing the total number of sales tickets into the total pounds volume of business, both of which are shown. An increase of, say, ten pounds per ticket, or 10% on the present
2017 weight, would reduce our expenses at least $2,000,000 a year.

Petitioner's Exhibit 146 is a similar analysis of volume expense and expense per hundredweight of business done through Swift & Company's car routes through the
2018 United States, 1923 to 1929, prepared in the same general form as the last exhibit. Petitioner's Exhibits 145 and 146 do not include the total business of Swift & Company, but only that handled through branch houses and car routes. These exhibits do not include export business and some direct carload sales, but these exhibits cover the bulk of our total sales in the United States. Our total sales, of whatever sort, domestic or export, are given
2058 in dollars in exhibit 136. Included in our car lot
2041 business is that on government contracts, chain [fol. 1118] stores, big baking concerns, and special sales to dealers. I do not think that any large amount of the chain store business is handled in car load deliveries,—less than half, I should say, although it is increasing considerably this last year. I cannot say whether the cost of handling car lot business has increased or decreased in the past ten years, or whether it would make up for any increase in the cost of our branch house and car route business, but it is rather small, and I doubt whether it would affect those figures materially. Swift & Company's sales to its largest chain store customer were for 1928: $18,913,632; for 1929: $22,183,744; for the year ending September 30th, 1930, $21,-

104,353. For the last period our total sales to all
2018-19 chain stores were $71,550,000; for the first two periods no figures were compiled.

We did some business in 1920 in non-meat foods, such as fruit, vegetables, kraut, catsup, etc., but were liquidating our business at that time. We did none in these lines in 1922, 1923 or 1924; a small amount in 1925, 1926, and
2019-20 1927 in kraut and pickles, about $400,000 worth in 1928, and $450,000 in 1929 in the same lines.

Petitioner's Exhibit 147 is a list of plants purchased by Swift & Company from 1920 to 1929, with data as to
2021. location, volume of business before and after purchase, and the Swift & Company units serving the same territories just prior to purchase.

Petitioner's Exhibit 148 is a statement of live stock
2022 by species purchased by Swift & Company from 1920 to 1929 on nine leading live stock markets in the United States; and Petitioner's Exhibit 149 is a list of points at which Swift & Company buys live stock in direct marketing as distinguished from its purchases on public stock yard markets. They represent a total of 1,520,-
2023 000 hogs so purchased in 1929, and 616,000 for the first six months of 1930.

[fol. 1119] Petitioner's Exhibit 150 is a list of corporations in which Swift & Company or its subsidiaries own capital stock. It covers the corporations engaged in
2023 the same business Swift and Company is engaged in.

All on the first page and the first seven on the second page are 100% owned. Of the remainder, Swift & Company now owns the following proportions:

	Andrews, Swift & Company	66⅔%
2024-25	F. & C. Crittenden Company	75%
	Pauley & Pauley Cheese Company	51%
Swift & Co. of Woonsocket, R. I.		66⅔%
Libby, McNeil & Libby (see below)		
Ft. Worth Rendering Company		50%
Independent Salt Company		50%
Midland Warehouse & Transfer Company		18%
Swift Coats Company		50%
Union Rendering Company		50%
Union Rendering & Refining Company		34%

2025 Libby, McNeil & Libby of Chicago is engaged in the business of canning meat, vegetables and fruit. The company became indebted to Swift & Co. in
2027-28 excess of $18,000,000 and being in a situation which practically amounted to bankruptcy, Swift & Co. was compelled in settlement of this open account to take over approximately $19,000,000 of the preferred
2054 stock of Libby, McNeil & Libby. This was done
2027-28 five or six years ago. This was cumulative preferred stock which was non-voting except when dividends were in default for a certain length of time. Upon that occurring, the preferred stock acquired a vote.
2026 Libby, McNeil & Libby was recently refinanced about
2028 three or four months ago and as a result of that refinancing, Swift & Co. acquired in exchange for the non-voting preferred stock, $21,000,000 of the voting pre-
[fol. 1120] ferred stock of the refinanced company. This gives Swift & Co. about 60% of the voting power of Libby, McNeil & Libby. In addition to this, members of
2027 the Swift family and officers of Swift & Co. own
2056 among them about 20% of the Libby common stock.
2062-63 Swift & Company does not operate any public stock yards, but owns capital stock in various
2029-30 stock yard market companies, a list of which, with the amount of its holdings in each, as of 1924, 1929, and 1930, is shown in Petitioner's Exhibit 151.
2031 Calculations I have made show that our cost of soliciting sales averages seventy cents per salesman-stop on our car route territory. This only covers the salesman and his expense. The total cost incident to the business of selling meat would average $1.60 per stop on car routes and $1.00 in cities where we have branch houses. Their total expense of soliciting orders would be close to $20,000,000. Where we deliver to retail stores by truck, the truck costs us about $10.00 a day and averages perhaps seventy stops. This would make an average truck delivery cost about 17 cents per stop.
2032 It is one of our problems to increase the volume of goods that we can obtain through our salesman when he makes his stops at customers' stores. We have to spend a certain amount of money to get him there and unless he sells a certain weight of goods, his business will not be profitable. So our problem is to get as great a volume of

business each time he visits a store as possible. We find that we have a great many orders which are quite small and when we load a truck there might be 50 or 60 deliveries on the truck. If we could load a truck and only have to get enough out of each customer so we would have to make 35 deliveries to empty the truck, it would decrease the expense of delivery and also decrease the expense of selling the product. In handling perishable commodities such as we deal in, deliveries must be made daily and sometimes twice [fol. 1121] a day. Processing is a very profitable part of the packing business. The slaughtering business
2033 alone is not particularly profitable. You have to have the processing in order to make a fair profit.

2033 We have a total of 53,000 employes, with a plan for retirement and pension, and a plan for employe stock
2035 investment with between 15,000 and 20,000 employe stockholders.

2033-34 Swift & Co. supplies all the money necessary to maintain its pension system. Under the company's pension plan, men are permitted to retire at 65 and women at 55 years after 25 years of service. They then receive a pension consisting of 2 per cent of their average salary during the last five years for each year of service; that is to say, if the length of service has been 25 years, the pensioned employee will receive yearly one-half of the average salary during the last five years of that service. The company also makes a provision for disability for employees who have rendered 15 years or more of service. The allowance made to disabled employees is 1½ per cent of the average salary during the last five years, for each year of service. The company also makes provision for the widows of deceased employees and pays to them one-half of the pension which the employee would have been entitled to receive. All of these payments are made yearly during life.

2035 The company also has group insurance and employees benefit association.

Swift & Co. guarantees its plant employees a minimum of five days work, of eight hours per day, per week. The plant employees receive pay for a 40-hour week whether they work that amount of time or not. The company
2036 also gives financial assistance to its employees in case of sickness or other misfortune. The plant employees receive annual vacations with pay the same as men employed

in the office. The company maintains a very extensive system of educational courses, both by oral instructions and [fol. 1122] by correspondence and has about 5,000 students enrolled at all times.

My study indicates that between 9% and 10% is a fair return to expect out of capital invested in industrial
2036 enterprises in the United States. Such a study has
2049 been made by the Comptroller of the Bethlehem
2049 Steel Company. This shows average railroad earnings at 6.72% for 1925; 7.53% for 1926; 10.25% for 1927; 6.58% for 1928. It shows an average return on investment of 8% in 1925, and 8.15% in 1928; that is the return on investment. On book value, it is 9.5% for 1925, 10.02% for 1926; 8.16% for 1927; 9.90% for 1928.
2064 For the meat-packing industry in 1928, the return on investment was 5.85%; for 100 shares of com-
2049 mon stock, it was 6.57% and on book value of common stock, it was 4.29%. This study covers only 479 companies for the first year, and 690 for the last,
2050 a small proportion of all the companies engaged in business in the United States, but I think they are quite important companies, and it gives a cross-section of the industry.

Petitioner's Exhibit 152 is a list of Swift & Company's wholesale prices, dated October 15th, 1930.

We are handling quick frozen foods through a
2057 number of our branch houses; most of them are equipped to handle it, but I do not know how many are actually doing so, or how much, as it is not an important part of our business so far.

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(64) GUSTAVUS F. SWIFT, Vice-President, Swift & Company. Chicago, Illinois, testified in substance as follows:

The business of this Company was founded by my father. Gustavus F. Swift, Sr. Of my brothers connected
2064 with the Company, Louis F. is President, Edward F., Charles H., and Harold H. are Vice Presidents. I have been in the packing business since 1889, and Vice President since 1916. Mr. Chaplin has been with the
2065 Company ever since I went with it, and knows more about its business than any other man connected with

[fol. 1123] it. I am a general executive in charge of operations, but perhaps do most in the Pork Department.

Swift & Company has no stock or other ownership in
2066 Armour & Company, Wilson & Company, Cudahy Packing, or any other meat packing concerns except those known as our subsidiaries. There exists no agreement between us and any of those concerns or with
2067 any other meat packing company in the United States excepting our subsidiaries with regard to price fixation, maintenance, depreciation, or manipu-
2069 lation, in the sale of our finished products or in the purchase of live stock. Nor do I know of any so-called unfair trade practices in the buying of live stock, to the detriment of producers.

We impose no condition on our customers, direct or indirect, requiring them to deal exclusively with us, or to buy one article in one line in order to get others that we handle. Very few of our customers could be called exclusive customers.

2068 The selling end of the packing business is very competitive. We meet competition of national packers, medium sized packers, local packers, jobbers. In most all cases the customer does not buy until he has tried three or four branch houses or had a good many salesmen of different competitive packers call on him. There is a very competitive sales situation in the packing business. We compete with Armour, Cudahy and Wilson in practically all places. It is very seldom that there is any territory that is not covered by all of us. Competitive conditions in the purchase of livestock are very evident. We compete in most cases at all packing centers not only with the local packers, but the national packer, eastern shipping
2069 orders; in general the full packing industry in our buying of live stock.

2070 Wilson and Cudahy are the only national packers whose scale of territorial distribution is as large as Swift's and Armour's, although they sell in considerably [fol. 1124] smaller volume than these two. This does not mean that their unit costs of distribution are larger,
2071 because they distribute in a more concentrated way in the larger cities, not working the small trade as hard. We have more branches in proportion to our busi-

ness than they have; we have not opened up any that our increased volume of business did not justify, but they
2072 concentrate with a bigger volume per unit.
2073 The only private stock yards operated by Swift & Co. are those adjacent to the plants of the Omaha Packing Co. at Chicago, and the St. Louis Dressed Beef Co. at St. Louis.
2074 We have no plans with reference to the retailing of meats and groceries in case liberty is given us to do so by modification of the Consent Decree.
2089 The situation is this—we have no plan. Legal counsel and other people have told us that it was of no advantage until we knew whether we could go into the retail business or not, but we are continuing to give the matter study almost monthly or weekly or daily as the new conditions develop, to try to arrive at a conclusion, so that we can make our plans quickly and promptly, if necessary or desirable, when we know whether we can or not. We may make up our minds in a month or we may make them up next week, that we will do it as soon as we can if we are permitted. But we have not made up our minds that we want to do it nor that we do not want to do it.
2090 We are not retailing now. In case we decide not to go into the retailing, I do not think that the liberty to do so would assist us in combating the buying power of the chain store. In other words, the mere possession of the liberty would be no advantage.

If we did it, I suppose there would be some resentment [fol. 1125] by other retail customers, and as I see the picture, we could not do it in a dribbling way. We would have to be prepared to take over the retailing of
2097 our own products as fast as this retail patronage
2073 pulled away from us. No decision has been arrived at, but even if we do not retail, the distribution of so-called unrelated lines at wholesale will be a very decided advantage to us in the reduction of overhead and the spread of the expense of our doing business on the meat
2075 products; that is, we would be able to handle unrelated lines with a small increase in overhead, sales, and delivery expense. We could handle the two together at less expense, as distinguished from handling meats alone, or wholesale groceries alone, and therefore, possibly at less expense than those who are now handling groceries alone.

We handled wholesale groceries to a large extent
2077 prior to the entry of the Consent Decree in 1920.
2078 Whether we would get more or less advantage from
2079 doing so now than then, I do not know; possibly we would get more. My general impression is that the wholesale grocery business generally has decreased since 1920, but there has been no substantial increase in the extent to which they handle meat products; but the
2080 continued higher costs of doing business seem to make it the proper trend of the times to do everything to reduce charges between producer and customer.

I know of no reason why the general increase in cost levels affects us more seriously than it does others handling those lines; it affects the general public.

We have been experimenting with the quick frozen process in meat lines and selling some of those products, but not to any great volume at present. We use a process that we have developed in our own laboratories, not yet covered by a patent, and whether patentable or not, I do not know.

[fol. 1126] I do not know whether patents have been applied for or not. Some of our people think the process is
2080 patentable and others do not. The quick freezing is not an expensive process.

2081 It requires lower freezing temperatures than the
2082 old process, more machinery and more expense. We have equipped a number of our branch houses with ordinary freezers which will carry the lower temperatures required. These cost anywhere from $5,000 to $25,-
2083 000, according to the size and location of the branch house. We have not equipped any of the retail stores, but are selling quick frozen products to some of them. They handle it in their refrigerator show-cases or ice-boxes, get it in the morning, and possibly get rid of it in the afternoon.

Large chain store buying has a tendency to force us to make lower prices and has had some effect, we believe, on our profits. The difference in prices to chains and
2084 independents is, broadly speaking, the difference between the cost of handling and selling, but affects our margin of profits by giving us more low price business without sufficient margin to take care of our overhead expenses, based on present facilities and investment in

branches, etc. It operates more seriously against us than against those who do not have our burden of dis-
2086-87 tributing equipment and branches, etc., but not more so than on other packers in similar circumstances to ours.

2087 There is a certain class of packers that are in shape to cater to the large order business because of their lack of overhead in branch houses. What I have in mind is the carload business of the large buyers, such as chain stores, etc. We are not in as good a posi-
2088 tion to handle carload business to chain stores as many of our competitors because of our present overhead and investment in branch houses. It has changed [fol. 1127] the method of doing business for us. A part of the business that we were formerly handling through our branch houses we now handle in carload lots to the chain stores.

We have increased our number of branches since
2088 1920, largely to serve growing territories, as it was the only method to get that class of business, and we did it because it was more advantageous to us.

The Mechanical Manufacturing Company went out of business and into liquidation some months ago. Other members of my family and I owned stock in it, while it was in existence, and will get for our holdings whatever they liquidate for. Its business was sold to Albright,
2090-91 Neill & Company, a manufacturer of packing
2092 house equipment. I and my five brothers own stock in the Waugh Equipment Company, but not a controlling interest, and I do not think that the compound holdings of the Swift family and officers, directors and personnel of Armour & Company would constitute a controlling interest.

2093 I have no explanation to make of the wide difference of earnings between Swift & Company and Armour & Company. Our employes appear to number approximately 10,000 less than theirs. I think their compensation would average at least $1,000 a year, which
2094 alone would amount to a difference in cost of $10,000,000. Swift & Company has been paying dividends consecutively ever since I can remember. Myself and five or six directors of Swift & Company are directors of Libby, McNeil & Libby, out of a total of 11, I think.

2095 The growing business of the large order is continually coming more and more from the chain store, and it is getting to the point where it is building up so that if you lose one of those customers it affects 2096 your volume and your results, etc. And it is getting to be a question whether you can continue to sell them at prices necessary to sell them or whether you should [fol. 1128] let them go. Every one let go means a big lot of business gone. There is a decided danger in large customers from our point of view.

My judgment is that if the packer retailed, there would be less gross margin necessary, and that wholesale prices would reflect themselves to retail values more promptly than under present conditions.

2098-2100 (65) JOSEPH A. MCGINNES, Sales Manager, Chautauqua & Erie Grape Growers Cooperative Association, Inc., Westfield, New York, and speaker of the New York State Assembly, testified in substance as follows:

This association has a membership of 2,000 grape growing farmers with an aggregate of about 20,000 acres of vineyard, raising 18,000 to 35,000 tons of Concord grapes annually in the Lake Erie valley, which runs along the south shore of Lake Erie from the Pennsylvania line about 40 miles into New York State and is the greatest Concord grape growing district in the United States. They are used for manufacturing grape juice, jams, jellies, and for table purposes, and are marketed generally between September 20 and November 15. We sell about 4,000 tons annually to the Welch Grape Juice Company's plant at Westfield and about 3,000 tons to the United Grape Prod-2101 ucts Company, which has two or three smaller plants in this belt; we used to sell the Armour & Co. plant at Westfield about three thousand tons but during the last few years our sales to it have dropped down to from 750 to 1,000 tons; and we have a large plant of our own, acquired in 1929, with a capacity of 3,000 to 5,000 tons. The rest goes into nation-wide car lot distribution on the open market.

2102 Under our contracts with the factories, made in advance of the shipping season, our prices to them are based upon what our grapes sell for in the open market. [fol. 1129] Consequently, the greater the open market supply, the greater the tendency to lower prices.

2103 This year the dry summer caused earlier ripening and we feared a drop in price to possibly $25 to $30 a ton.

2103 Armour and Welch, however, came to us and made a proposition that they would guarantee to the grower at least $40 a ton minimum. This immediately stabilized prices and made a very much better condition. In my judgment, if something of that kind had not been done, it would have meant a difference in return to the individual grape grower of $10 or $15 a ton.

2104-5 We purchased our plant in 1929 with the aid of the Federal Farm Board, and the personnel at the Armour plant were very helpful to us with the benefit of their experience in helping to get us started.

2105 Our company and the individual grape grower in our district have had relationships with Armour & Company for at least 20 years. From a business point of view these relations were very satisfactory and very fair. Aside from the business point of view, we feel that their attitude toward the industry has been very sympathetic. This industry, like everything else, has its problems and they have been helpful in solving those problems. They have not approached it with the cold-blooded attitude of corporations generally. If the Armour plant were closed, it would be injurious because it would compel us to look elsewhere for a market for the product they take.

2106 It is highly advantageous to be able to have your grape product manufactured in the district where grown.

[fol. 1130] (66) David K. Falvay, President and Manager, Chautauqua & Erie Grape Growers Cooperative Asssociation, Inc., Westfield, New York. testified in substance

2111 as follows:

This is the concern of which Mr. McGinnis is Sales Manager. Our membership also raises from 300 to 500 tons of cherries annually, and some tomatoes. In the last

two or three years all our cherries have gone to the Armour plant at Westfield *at 6¾ cents* per pound. The highest that others paid for cherries in this belt was 5 cents to 6 cents per pound. Armour also takes all our currants and several thousand bushels of apples. Cherry tree
2113 planting is increasing among our membership. The trees mature in about six years, and in the next three or four years we anticipate a tonnage of about 700 to 900 tons. No one else in this district is available to take them, and if the Armour plant were closed it would very seriously damage us, and I do not know what we would do with our cherry crop.

2114 (67) CHARLES H. HAYS, President, Keystone Co-operative Grape Association, Northeast, Pennsylvania, testified in substance as follows:

This association has a membership of about 350 grape growers, controlling 5,500 acres of Concord grape vineyard, or about 60% of the acreage in the Pennsylvania belt. This is the same belt that runs into New York State. We ship from 5,000 to 16,000 tons a year, mostly in car lots, all over the country.

2116 We cannot sell to the Armour plant, 15 miles away, because they can get their grapes closer with a shorter haul. Whatever crop the plants take helps the outside markets from being glutted.

[fol. 1131] We have sold currants and cherries to Armour and have always found them very fair in their
2117 treatment, sometimes voluntarily paying a little higher price than we could get elsewhere, and helping us with the installation of machinery and the loan of equipment.

In my judgment the closing of the Armour plant at Westfield would have a serious effect upon the growers. We have an overproduction of grapes now that
2117 can be marketed in their fresh state and any loss of facilities of this sort makes the market less profitable.

2118-21 (68) ISAAC HOAGLAND, General Superintendent of Branch Houses, Armour & Company, Chicago, testified in substance as follows:

I have been in my present post since April, 1928, with Armour & Company for 20 years, and prior to that with Kingan & Company for 10 years in various capacities from laborer to salesman.

Petitioners' Exhibit 153 is a statement I have prepared of Armour and Morris branch houses, used and idle, February, 1920, and September 1, 1930, and the number opened, and disposed of in the meantime. This shows a total of 398 Armour branch houses in 1920, of which 78 have since been closed, while 17 others have since been opened; also 167 Morris branch houses in 1920, of which 115 have since been closed (all but two of them since the Armour-Morris merger in 1923) and 13 have been transferred to Armour & Company proper, while two additional Morris branches have been opened since the acquisition in 1923 to keep the advantage of the Morris brands and good-will. Of those that have been closed, 69 have been sold for a [fol. 1132] total of $1,324,237.44, 6 have been leased to others, while 57 (including 25 owned and 32 leased) remain idle on our hands, with an original cost of $2,562,416.17 and a present book value of $1,900,346.27.

2157-8 In the case of the leased houses, these figures represent only what we have put into them in the way of special alterations, equipment, etc.

In addition to those the disposition of which is here shown, 61 others, out of the total of 193 which have been closed, were operated in leased properties the
2155 leases to which have since been terminated or
2164 canceled. To obtain these cancel-ations we have paid the lessors a total of more than half a million dollars.

It is sometimes preferable to lease rather than acquire branch-house properties; but in either case we sometimes have to install special construction in the way of
2155 coolers and insulated walls and partitions, if they do not have them already. Some of our undis-
2156 posed leaseholds have as much as 10 to 20 years
2157 yet to run. Rentals on our leaseholds may very from $225 a month up to $10,000 a year—perhaps some even more.

On February 1, 1920, we had 7 idle branches on our hands (2 owned and 5 leased), the total original cost of which was $29,997.40, and the then book value
2122-3 $27,038.36. The difference between the figures for original cost and book value represents what
2159 has been written off for depreciation. This was charged as an operating cost.

2123 Armour & Company has 22 branch-house dis-
2125 tricts, with from 6 to 40 houses in each district, depending upon transportation, volume of business, etc,

[fol. 1133] At the present time Armour & Company has 9,924 employees in its branch houses, there being 1,362 in the accounting division, 2,697 salesmen, 384 man-
2124 agers, 1,289 shippers, billers and checkers, 1,229 laborers, 1,195 team and motor truck operators and 1,772 manufacturing employees. The physical property of a branch house consist of a building of one to four stories containing refrigerated space, dry storage, loading and unloading docks, office space and space for the storage of delivery equipment. Branch houses are also equipped with machinery for slicing bacon, sausage machinery and smoke house and storage facilities for use in manufacturing.

Our investment in individual branch houses runs
2125 from $25,000 to $400,000, and totals $26,307,257, with an annual operating cost around $30,000,000.

Shipments from headquarters to branch houses are made on branch-house managers' orders based on their estimates of their requirements. The quantity is determined
2126-7 by them and not by us in Chicago. We bill them on a fixed scale price on the regular branch list, which varies with fluctuations in the livestock market, just as we bill other wholesalers to whom we ship. They sell, in turn, at prices determined by the particular manager on the basis of the trade, part of which is solicited by salesmen but more of which is sold right in the branches.

Armour & Company has reduced its number of branch houses since 1920, because many of them were unprofitable due to lack of volume. There are several changes
2127 which have brought about this situation. In 1920 and prior to that time, the regular channel through which meat products flowed was from the packer to the wholesaler and retailer and our branches were located to

carry out that scheme of merchandising. That plan has been upset since 1920 to some extent, by the changes that have been brought about by centralized buying of the chain [fol. 1134] store and the development of the motor truck. This has had a material effect. The chains buy a large quantity and take it into their centralized warehouse and distribute to their stores and do not allow their supervisors or store managers to purchase locally as they formerly did. The motor trucks have enabled the retailer to go into the larger markets and buy and has also enabled the jobbers in larger cities to extend their trading radius and intensify competition. This has resulted in a lack of volume
2128 in many of the smaller cities located adjacent to larger cities. A reduction in branch house volume brings about some decrease in expense but not in proportion to the decrease of volume. There are certain charges that are fixed such as rent, taxes, insurance, management and bookkeeping and these are not changed because of lack of volume.

Marlboro, Mass., is a concrete illustration of the manner in which the increased use of motor trucks has affected our branch houses. Marlboro is located approximately
2130-1 25 miles from Boston and 15 miles from Worcester. Armour & Company owned and operated a branch house at Marlboro for many years and acquired an additional branch in connection with the purchase of the Morris property in 1923. When those branches were established in Marlboro there were no chain stores and there was no method of getting in and out of Boston except by horse drawn vehicles or trains. When the chain stores were first established in Marlboro they allowed their individual store managers to buy. Later they had supervisors do that buying and continued to do at least some of it locally. During the past few years, since the establishment of their centrally owned warehouse, the chains buy nothing in
2131 the City of Marlboro, and as a result our volume was greatly decreased in our branch houses. We closed one branch house and later closed the other and have no branches at Marlboro at the present time.

[fol. 1135] Our branch-house sales have decreased $110,000,000 since 1920. Closing certain branch houses
2128 has not afforded an adequate remedy, because it leaves us with the carrying charges of idle proper-

ties on our hands and with idle space in other branches that is not being utilized. Branch houses are necessary to one doing a meatpacking business on a nationwide scale, to enable the prompt and rapid movement of the product.

2131 The size of our sales per order to independent retailers has dropped since 1920 from an average of 156 pounds to 126 pounds.

2132 Our total volume of branch-house business in the same time has dropped from 3,000,000,000 pounds to 2,800,000,000 pounds, while the number of sales tickets has risen from 19,400,000 to 21,900,000, resulting in an increased cost per order in every way.

2132 The two principal things that make the selling cost of an order large are salary and traveling expenses of salesmen. It costs just as much to travel a salesman a mile or ten miles to obtain a 20 pound order as it would cost to obtain a hundred pound order. The same thing is true with reference to bookkeeping, credit expense, management expense and, to some extent, delivery. While a truck may have to stop a little longer to unload a larger order, the large part of the cost of the operation of the truck is the traveling of it, and it does not cost any more for a truck to travel to deliver a hundred pounds than it would to deliver 25 pounds.

2133 Direct sales to chain stores have not remedied the branch-house problem, because we still have to maintain the branch to service the small dealer, while the extension of chain activities into processing meat products has taken over to that extent one of the packers' most profitable functions and resulted in some unused equipment at branches.

[fol. 1136] We were approached in 1928 or 1929 by At-
lantic Coast Fisheries to handle their quick-frozen
2134 fish through our branches; and, when we could not do so, they went to Kingan & Company, of Indian-
apolis, who are distributing these products at sev-
2134 eral places. Kingan & Company do a volume of business in practically all of the eastern part of America and also along the Pacific Coast.

2144 Outside of Atlantic Coast Fisheries, the Birdseye concern, part of General Foods Corporation, is the

only one handling quick-frozen fish as far as I know.

2135 We have noticed voluntary chain operations, particularly in the sale of canned meats, because those sponsored by wholesale grocers and requested to handle the particular wholesaler's brand, whereas they formerly bought from us. Some of them have extended centralized buying also to smoked meats and refinery products.

2136 Chains often sell Armour branded products as leaders at cost or below cost, to attract people to their stores, and competing retailers then feel that we have been discriminating against them. This stiffens the sales resistance of that class of retailers.

2137 Sometimes where we have served one of the larger chains for a long period of time and enlarged our facilities to take care of it, it has suddenly withdrawn its business without particular notice, leaving us with unused equipment and an excess of perishable product on hand that we must go out and find a market for, often at extremely low prices.

2136 For a long period of time we sold one of the large chains considerable quantity of sliced bacon, which we sliced locally so as to furnish it to them promptly and in the best condition possible. To do this we put in special equipment in that branch house and without any particular notice the chain discontinued buying from us, leaving us without any use for the enlarged facility.

2137 Often a branch house sells regularly to a chain over a period of time and quite naturally the manager of the branch anticipates continuing to sell that chain when he is ordering his requirements. Then if the chain [fol. 1137] buyer fails to come in and purchase, we find ourselves with an excess quantity of perishable products and are forced to go out and find a market for it, and in many cases, to sell it at an extremely low price.

2138 We could handle non-meat products along with meat products through our branches, with out existing facilities, and distribute our selling costs over a wider line without increasing our fixed charges at all, nor, we believe, our delivery charges either to any extent.

2139-40 There is an increasing tendency in merchandising to diversify the number of lines handled, both by chains developing the combination meat and gro-

cery store and by such integrating concerns as General Foods, Standard Brands, etc., taking on numerous lines. Our district managers have reported this experience generally throughout the country, except that the chain store has gotten a greater footing in the northeastern part of the country than elsewhere.

2141 I think the entry of large packers into retailing meats would result in keeping retail prices closer in line with wholesale prices, because, as it is now, gluts head up chiefly in the packers' hands, causing overstocking in the branch houses, and we have difficulty forcing it through the retailers' hands into consumption at decreased prices to get it moved.

2145 There is always a hazard and a speculative risk involved in the process of curing products. The chain stores buy products already cured and ready for processing. They do not cure them for processing. A chain store buys bacon ready to slice. They have not had the risk of carrying that product and having it deteriorate in the process of curing before it can be smoked.

2145-46 Products which we process ourselves, and similar products purchased from us and processed by chains, are, up to the point of that purchase, given the same general treatment in our plant.

2147 The chain store advantage in selling the finished product which they process is largely that of selling in packages under brand names, with the prestige and [fol. 1138] good-will which attaches to it. We used to sell them sliced bacon under brand names, but do not do so now. The meat we sell to chains goes to them unbranded.

2148 and 2158 If we had been handling groceries as well as meats in the past ten years, sufficient to supply stores equally with both, I doubt whether we would have needed any additional branch house capacity. We could have handled both lines with our existing facilities.

2165 (69) WILLIAM S. CLITHERO, Assistant Comptroller, Armour and Company, Chicago, recalled, testified in substance as follows:

The total amount paid out to obtain cancellations on branch-house leases in the last ten years, including the

scrapping of equipment that we had to discard, was in excess of half a million dollars. We paid as high as
2167 $15,000 for one cancellation on a branch in Florida. I do not remember whether this was during the Florida boom or not.

2167-68 (70) JOHN A. HAWKINSON, Nashville, Tennessee, testified in substance as follows:

Prior to my present retirement I was in the packing business over 40 years; 22 years with Swift, two years with the Tennessee Packing Company at Nashville, eight years with Sulzberger & Wilson, and eight years with the Allied Packers, Inc., as president. The latter concern
2169 in 1927 sold its five Canadian plants to a new Canadian
2200 company, and in 1929 its American plants were taken over by the HyGrade Food Products Company. This is a consolidation of a number of eastern processers handling all kinds of fresh and cured meats and making sau-
[fol. 1139] sages; also operating these four packing plants of the Allied Packers.

Allied Packers' annual business while I was with it
2169 ran between 2,000,000 and 2,500,000 animals and from $60,000,000 to $90,000,000 sales. We had five slaughtering plants in the States, in addition to the Canadian plants.

2170 The meat packing business includes the following classes of packers:

1. Interstate packers, who do an interstate business.

2. Local packers, who sell their products in reasonably close proximity to their plants.

3. Non-federally inspected packers, who sell within a few miles of their plants.

4. Non-slaughtering packers, who have their
2202 slaughtering done at public abattoirs for a fee. The slaughter of lifestock at public abbat-oirs for farmers is a negligible portion of the business. The principal service of the public abbat-oir is slaughtering for meat packing companies.

2170 5. Farm kill, which in many sections of the country during winter months is very large. These animals are cooled in the open air and sold to local dealers or in the public market square.

6. Periodic packers, who augment or reduce the volume of their slaughter according as their business is
2171 profitable. For example the Western Packing Company, later purchased by the Allied Packers, was organized by ten wholesale meat dealers who used that plant to slaughter their animals. After the Allied Packers purchased the plant we continued to slaughter for these packers for a number of years. We bought their animals for them, chilled them and delivered them for a fee, and they did their own cutting and processing and sold
2202 their products. There is a typical public abbat-oir in Nashville which is owned by a group of small packers who buy their own livestock and have the same slaughtered for a fee at the abat-oir. New Orleans has two public abattoirs, Houston, Texas, one. They are scat- [fol. 1140] tered all over the country. These abattoirs also kill livestock for farmers, but this is a negligible portion of the business.

2172 The national or interstate packer meets these other classes of competition in all markets in varying proportions. For instance, 50,000 hogs are killed around Nashville every winter and it is almost impossible at that season for larger packers to sell fresh meat there.

The local packer enjoys a decided advantage in his home territory:

1. Because he can buy local supplies of livestock on a more reasonable basis due to his local contacts.

2183 2. Because local-dressed meats command a premium over western-dressed meats, of from one cent to three cents a pound.

3. This premium enables him to sustain the greater cost incidental to buying livestock on distant markets and shipping it in where the local livestock is insufficient to meet his needs.

2172 4. Most local packers have been residents of their locality for a long time and are personally and gen-

erally favorably known. They have a certain amount of local prestige and are in close touch with their own livestock buying and with their own trade.

Farm land surrounding many of these small packer locations in the more populous east is no doubt more valuable than that on which western cattle is produced; and the local packer affords a market for livestock raised on such land. It would be entirely impracticable for these local farmers to ship their product to the western markets, because of the freight. In territories east of the Mississippi, the farmers are largely dependent upon the local packer for the disposition of his livestock. The further east you go, the more this is so, while the further west you go, and the nearer the farmer gets to the great western producing areas, the less dependent he is upon the local packer. The farmer from Iowa, for instance, could ship his livestock to Chicago or [fol. 1141] even further east. I think, if the present local packer, by any possibility that I cannot conceive, should disappear, other local packers would develop.

The Allied Packers, prior to their absorption by HyGrade, did a nation-wide business, with 35 to 40 sales agencies, four branch houses, 50 leased refrigerator cars and many others which we got from the railroad companies and sometimes even from the larger packers without charge; and around 100 car routes.

Since 1925 the use of motor truck deliveries has greatly developed, and the radius of their use increased, affording quicker deliveries and the elimination of hauling charges at each end of the shipment. There is a great tendency all over the United States to enlarge delivery by truck.

We bought our livestock through our own salaried buyers at Chicago, Buffalo, and Detroit; through order buyers on other public markets; and some direct buying, into which we were forced by decreased hog receipts at Chicago.

Livestock prices are quickly equalized by a flow of buying at any market which falls below the level.

The meat packing industry has become decidedly more competitive since the war. It is practically impossible to get any definite figures as to

the number of competitors, but small packers have expanded their sales methods, and competition with the so-called "Big Four" has perhaps become distributed over a greater number of concerns in the field. I do not mean that competition among the large packers has in-

2177 creased. This increased competition is because during the war the bulk of the government business was given to 65 packers, allotted by the Food Administration, leaving a gap in the domestic trade which was largely picked up by smaller packers. Also, plant facilities were generally expanded, resulting in a general scramble of the entire industry after the war to secure enough business to fill their plants. Good roads have been another factor that has increased competition. It has made trucking feasible, [fol. 1142] advantageous, and economical. It has extended the distribution area of the local packer. The chain stores have been a contributing factor. We have fewer buyers now to sell to. There has been quite an increase in aggressive selling by different packers advertising new brands and new products. There are so many things that it would be difficult to specifically name any one that has caused the change.

2178 Packer entry into the dairy and produce business has been a distinct benefit to the industry, through the introduction of refrigeration, packaging, and grading of eggs, cartoning of butter, etc. There is a tremendous amount of competition in the produce business.

2178-79 There are large companies engaged in it and according to the published annual reports and quarterly reports they have been able to increase their business profitably regardless of packer competition.

2180 Referring to the cleaning up of the yard, the most desirable hogs sell first and after the active trading is over almost every day there is some livestock left. Some of it may be desirable. Others might be desirable weights but of unsatisfactory quality and others might not be particularly desirable for such packers. That class of stock is more difficult to judge. The buyer has to examine each animal more closely and it generally sells after the active trading. I know that so far as our company is concerned, we keep our buyers in until the close of the market and if there were any bargains there, if we could buy that class of animals, we bought our share.

I think it would be absolutely impossible for any packer or group of packers to monopolize the meat packing or food industries. Any effort to monopolize so essen-
2181 tial a food product as meats would meet with such a wave of adverse public sentiment that I think it would spell calamity for whoever did it, but even if it did [fol. 1143] not encounter that adverse public sentiment, I think it would be absolutely impossible for any group of packers to become large enough to control the livestock supply. I think the farmer would soon be in the packing business and there would be hundreds of packing houses spring up. Firm prices for finished products attract
2182 new concerns into the business. When there is a period of high prices for livestock it inevitably brings increased livestock supplies generally the following year.

If a local packer with his personal contacts with the trade should be absorbed by a large packer, I think he would still be able to continue his personal contacts and furnish the same personal service as theretofore, although he might not have as much interest in doing so. Larger
2188 packers in acquiring local establishments could draw their personnel from the local community, and these personal contacts could be continued except for the lessening of the ownership incentive.

2189 If the large packer should equip himself with a process whereby he could kill meats and freeze them quickly and package them in small package forms, ship them to the local markets throughout the United States and place them there before the buying public in a condition the equal of fresh meats in every respect so far as nutriment, flavor, appearance, quality, and all the other characteristics that are desirable to the purchaser, this situation would destroy the advantage of the local packer insofar as his advantage consists in his ability to offer fresher meats. But in my opinion, the local packer would still be able to compete. He could do the same thing.
2190 He still has his local prestige, and the advantage of personal service and ownership supervision and
2189 management which is a very great factor in any business. And he would still have 30 or 40 different
2191 varieties of smoked sausage which are not adapted to quick freezing and which lose their bloom in ship-

2190 ment. This is only a small portion of his business but a considerable portion of the profitable end of his business.

[fol. 1144] The Allied Packers never handled any unrelated lines except butter, eggs, and cheese.

2199 Immediately after the Armistice the packers confidently looked forward to a very large continued export business which did not materialize. This big effort to regain volume and increase volume became prevalent in 1920 and increased constantly since that time.

2203 (71) NATHAN STRAUSS, 401 Park Place, Brooklyn, New York, testified in substance as follows:

2204 I started in the retail meat business 30 years ago with one shop. By 1920 I had 50 or 55, with total 2214 sales of $3,500,000. In 1928 I acquired the Roth Company meat stores, and in 1929 my total sales 2205 were $14,000,000, with 220 stores, of which 25 also handled groceries, and are combination meat and grocery stores with complete lines. We are doing a business of a million dollars in groceries, and 90% of the stores we are opening now are combination stores. Six months ago we started to put lunch counters in our stores and have 12 such stores now. My concern is an instance of one that started in the meat line alone and is going into groceries.

I have been compelled to put in all kinds of goods 2206 because we lost quite some business because of the competition of the chain store, by not carrying butter, eggs, and groceries. We have for the last year or so been quite successful with our grocery lines.

Some of our old stores that were running low, we turned into 5-to-30 cent meat stores, that is, handling only meats selling from 5 to 30 cents a pound. It has boosted our sales as much as ten times. Those that were doing $300 are doing $3000 per week now. Our stores are located in Massachusetts, Rhode Island, Connecticut, Bethlehem, New Jersey, and New York City. We buy meat from about 150 different concerns each week, probably 20% to 40% from [fol. 1145] the big four packers, with the balance from independents. I direct all the buying and visit 30 to 40

wholesale meat houses each morning before 8 o'clock;
2208 go into the coolers, talk to the managers, find out
the best prices and instruct my men to buy, or not
2209 to buy accordingly. I have eight meat buyers be-
sides myself. We find competition all along the line
2210 to get our business both with the independents and
large packers, and buy where we find it cheapest.

2219 (72) J. A. REVELLE, Assistant Manager, Swift & Company's general car route sales department, Chicago, Illinois, testified in substance as follows:

This department has supervision over the total of 1014 car routes that emanate from our 22 packing plants in the United States. A car route can be briefly described as the group of towns served by a salesman who starts out on the route Monday morning and works until Saturday taking orders from the retailers in each town. These orders are forwarded to the packing plant from which the salesman operates, where they are filled and loaded into a refrigerator car. This car is then placed in a local freight train and travels along a scheduled route, stopping at the various towns where the goods are unloaded by the local train crew and turned over to the customers or to authorized draymen by the railroad agent.

The salesman calls on the dealers at a regular scheduled time during the week, and the orders he takes are shipped
in regular scheduled cars. He is assigned a definite
2220 number of towns and given a statement showing the loadings and arriving schedule of each of the cars that serve his towns. The average route consists of about 75 to 125 customers. The salesman usually calls on each dealer at least once, and some of them two, or perhaps even three times a week. These dealers may all be in one town, or they may be in even 35 or 40 towns, depending, of course, on the accessibility and size of the towns. The salesman usually lives in one of the towns on his route and travels in an automobile.

Ordinarily we have a branch house in the cities and the larger towns that takes care of those towns and the territory immediately around the branch, and the car route sales [fol. 1146] department takes care of all the rest of the

country, if located within 500 or 600 miles of one of our packing plants. Ordinarily the limit of practicability of operation of a car route is about 600 miles from a packing plant. Such cars are unloaded by the local train crew at the freight house. It is operating on a local freight train, and it is unloaded by the local train crew, by the brakeman, and the product turned over to the local railroad agent. He, in turn, releases that to the customers, who may call at the station for the product, or we may have an
2221 arrangement in that particular town with a local drayman to haul this product to the customers.

In 1920 practically all sales in car route territory were to the independent trade. The development of the chain stores was of very little significance in car route territory at that time in the retailing of meat products. In fact, there had been very little development of chain stores in the food lines in car route territory, of any character, in 1920.

In our car route territory there are now about 7,000 chain stores, 1,900 of them handling fresh meats, and nearly all of them handling smoked meats, butter, eggs, and cheese, and refinery products—lard and shortening—and usually oleomargarine. The greatest development in the meat end of the business has been within the last three years,
2222 since 1925. In sending out these car routes, we pay the freight on each individual shipment, just the same as if we offered that to the railroad company for shipment by local freight. We pay at the regular class rate on each individual shipment. In addition, we have to guarantee the railroad company a minimum revenue per car. In most cases that minimum is about 12,000 pounds, although there is some variation in the different freight classifications. When the salesman fails to obtain the required weight to produce this minimum revenue, we have to pay the railroad company the difference in the form of a charge known as a deficit, or more commonly, a penalty.

This makes it necessary to have a steady, even flow of volume in car route territory, because we have to maintain regular schedules for each car route territory. Of course, we have to have a scheduled service so that the customer [fol. 1147] will know when he can obtain his requirements.
We could not operate that on a haphazard basis, be-
2223 cause we could not obtain orders from the dealers. When our salesman calls on a dealer, the dealer

wants to know definitely that that car will arrive in that town on a given day of the week, so we have to operate these cars on schedule, and they have to pull whether we have the weight in them or not. Whether we get the orders, or not, the cars go out, and if they do not contain sufficient weight, we have to pay this penalty.

The development of chains has made it more and more difficult to operate our cars, and give satisfactory service without paying penalties. The chains follow the practice of establishing warehouses at central points where they buy packing house products in carload lots and even in some cases, fresh meats. It is developing more and more into the line of fresh meats. They buy these products in carload lots and then redistribute to other towns in the car route territory by truck, together with the canned goods and fresh fruits, vegetables, produce, and items of that kind. There is just so much business available in a car route town. Take a town of 4,000 or 5,000 population. There is only so much produce consumed in that town, and when a chain establishes a store in that town and makes an arrangement to truck its product from a central warehouse, it reduces the salesman's chance to get weight for his car in direct ratio to the quantity of meat that they sell.

The development of the chains, of course, has been
2224 spotty over the car route territory, and where they have developed to a considerable extent it has had a very, very pronounced effect. I know of instance after instance where we have been compelled to reduce our service in a given territory from three to two times a week, or from twice a week to once a week, in territories where we have operated for years that given service, and by reason of the reduced volume obtainable for this car, we have had [fol. 1148] to reduce the service to the balance of the trade. I can think of some cases—for instance, Elkhart, Indiana, out of Chicago, we gave three cars a week for years. We have recently had to cut that to two. Danville, Illinois, is in the same situation. At our East St. Louis plant, where there has been a very big development of chain stores in Southern Illinois, Southern Indiana and Kentucky, and Southern Ohio, it reached a point where we have had to cancel a great many cars. I would just like, if I may, to give you some figures on our East St. Louis plant. Starting with 1925, we shipped 8,146 car route cars out of our

East St. Louis plant. We had a volume of 106,948,000 pounds in those cars. In 1926, we began to get this development of the chains, the big chains, particularly, and the development of these warehouses, the establishment of warehouses at Louisville, Kentucky; Cincinnati, Ohio; Indianapolis, Indiana, Huntington, and a number of places throughout that territory. They had to reduce that
2225 service to 7,000 cars, with a total of 93,000,000 pounds. In 1927, they had to cut it down to 6,700 cars. In 1928, there were 6,400 cars, with 75,000,000 pounds, and in that year we had to pay the railroad penalties of $57,000 out of that plant, because of sending out so many cars lightly loaded. The penalties had always been a negligible factor before, but they jumped to $57,000. We had been going along, hoping that this was a temporary situation, or that we would be able to meet this chain store situation, and we tried to maintain the service as nearly as we could. Finally, in 1929, we saw that we would have to adjust, to a very radical extent, that service. In 1929 the number of cars shipped from that plant was 4,341, a drop from 8,146 in 1925, and the total volume from the plant was 67,000,000 pounds. The situation is even continuing in 1930. We will ship even fewer cars in 1930 than we shipped in 1929. We cannot obtain the largest part of the chain store business in a car route territory for our car routes, for as I have previously explained, they followed the practice of establishing warehouses at central points.

[fol. 1149] Ordinarily these warehouses are in some city, and they buy their packing house products in car-
2226 load lots and then redistribute by truck to the stores out in the car route teritory, along with their canned goods, fresh fruits and vegetables. When we do occasionally prevail on them to utilize our facilities, for delivery, we find it unprofitable, because they will not give us their entire requirements. They go along, and they may use us as a convenience, say, perhaps on some little item of fresh meat, or something of the kind, where it is more convenient to utilize our facilities than to redistribute from their warehouse. They may give us a group of orders for each individual store, but ordinarily those orders are so small that we can not make a profit on them.

I would like to explain, in that connection, that we have to pay the railroad company a minimum freight charge

on each individual shipment, just the same as if we offered that shipment to them for shipment by local freight. This is in addition to the penalty. Ordinarily, that minimum is equivalent to the class rate on 100 pounds of the highest rated commodity in the shipment. In other words, when we have a shipment for any individual dealer or any individual store, consisting of less than 100 pounds, we have to pay the railroad company the minimum charge, equivalent to the charge on 100 pounds of the highest rated commodity in that shipment.

For that reason, when these chains give us some business, it ordinarily only consists of a few items. Maybe the aggregate of them will be several thousands pounds for the car, but distributed among a large number of stores and a large number of different towns, the individual orders
do not constitute 100 pounds, so they are unprofit-
2227 able, by reason of the extra freight that we have to pay on them.

[fol. 1150] Naturally we have tried to maintain our service to the best extent that we can, and in an effort
2227 to do that, we have expanded and reached out, and sold little dealers that we formerly did not solicit, because of their size; because ordinarily we could get sufficient volume in the past without taking on that small class of trade. We have been compelled to go to the smaller towns and to the smaller dealers in the towns we do work. As an evidence of that, our average weight per order has decreased from 206 pounds in 1923, to 165 pounds last year.

In 1925 we were selling 65,000 customers in car route territory. In 1929 we had raised that to 83,000, but
2228 we have taken on a greater number of small orders.

Before 1924 and 1925, an order of less than 100 pounds was an unusual thing on the car routes. It was against our policy to take them, and it was understood by the salesman that orders of less than 100 pounds were not acceptable because they were not profitable. It was fairly well understood by the trade to be a practice of the industry.

We have had to change our ideas on that, because we have been forced to get out and get this small trade. In 1929 approximately 35% of our total orders were for less than 100 pounds, on each one of which we were penalized, not only in the matter of the expense of getting them, but

also in the expense of delivering them, by reason of having to pay a minimum freight charge on 100 pounds.

Our credit losses increased more than $160,000 last year, over 1920.

It is the custom of chains to buy what bargains they can in the city in which the warehouse is located. If there happens to be a glut in that particular market on any perishable item, they buy it at the best price they can, and with their trucks they redistribute out into the car route
2229 territory, and that has a depressing effect on the market level in these car route towns, because that glut may not exist at all at the plant from which these cars emanate. Perhaps the glut in this city, 75 or 100 miles
[fol. 1151] away, would not have been felt under the old conditions, but the chain spreads that. They buy
2229 that product in the market that is glutted, and ship it to their stores, so it has a depressing effect on the level of prices.

Prior to the development of hard roads, the competition in the average car route territory was limited pretty well to the packers who shipped car routes in that territory and to the packers who had local branches, and to the local packers who were in the immediate vicinity. Since the development of hard roads, many of the small packers from the various cities around have spread their truck deliveries. It permits them to get out with quick, rapid delivery into territory that they formerly had no access to. So, the competition from your small local packers in the average car route territory has greatly increased since 1920. It has reached a point now where I would say that almost every little town, and almost every customer in car route territory, has an opportunity of buying from 10 to 25 local packers, in addition to our meeting Armour & Company in that territory, and Wilson & Company,
2230 and Cudahy & Company, with their car routes or branch houses in a great part of the territory, or at least some parts of each route.

In our car route territories, we come into contact with all types of competition. We meet the big packer,
2233-34 with his car route and branch house, where they overlap; we meet the so-called western packer, the Iowa packers who have car routes expanded over al-

most the entire country. We meet the local packer, we meet the local slaughterer, we meet the farmer killing his own products and selling them to the dealers in the town, and that is quite a considerable factor of competition, particularly at certain times of the year in car route territory.

This small order, small delivery problem, as our car routes are concerned, can be very definitely helped by handling other items.

To begin with, our salesman, as I say, calls on these deal- [fol. 1152] ers at regular scheduled times, and when he is in a store he could just as easily take orders for canned goods and other items of that kind. It would reduce our selling cost per call, and it would greatly reduce our delivery charges, particularly on these small orders, that now do not contain the minimum shipment; and it would also enable us to operate to give better service in our cars, because we would have more weight in the cars and we could give more satisfactory service without penalties.

In shipping by our refrigerator cars, we can make up the minimum weight with any kind of mixture at all, so as to avoid the penalty. In the so-called peddler car, all
2230 commodities go to make weight, in practically all freight classifications. I believe in Western Trunk Line territory at the present time that is not true, but in Southeastern and Southern and in C. F. A., and in various freight classifications, and in practically all car route territory, all commodities go to make weight in the cars, and there is no economic reason why that should not
2231 be true in the small section where it does not now apply. I do not think there would be any difficulty in making that change.

We would not get any reduction in the freight rate but would be allowed to make up our minimum by a variety of articles. We would pay the same rate as any other shipper, just the same as we do now on packing house products. We do not get any preferred rate, in so far as the freight rate itself is concerned, and we would not on canned goods, but we would be permitted to take the revenue from the canned goods and apply it against the minimum necessary for that car.

I know of no reason why it should be easier for chain stores to service their individual stores by truck at a

greater distance than we could ship them from our
2246 branch houses other than the advantage they have of loading a great number of different items in the [fol. 1153] truck. On the one hand, they ship only to their own stores, while from our branch houses we can service all of the stores. On the other hand, they have the entire requirements from the store while we have a large
2247 number of packers competing for the requirements of each dealer we serve. We serve, of course, a larger number of dealers than any of the particular chain.

There has been quite a development in the past few years in voluntary chains. That development is more recent than the regular chain, but it is becoming quite pro-
2231 nounced and from present indications is growing to be almost as big a factor as the chains themselves. In a great many localities these voluntary chains are organized by wholesale grocers and they service these individual stores along with the groceries, with items such as produce, oleomargarine, and refinery products. In addition to that, there is a practice growing up of these
2232 wholesale grocers designating certain packers from which the individual members are to purchase their requirements of fresh meats, cured meats, and packing house products of all kinds.

We have run into quite a few instances where these wholesalers have solicited the packer for a discount to be paid them at the end of the month on the total purchases of the members of that association in return for which they designate to those individual members a certain packer and instruct them to buy from that packer. Such a plan gives them much the same buying advantage as chain stores, although we still have to give them independent service and make individual collections. I have no knowledge as to the quantity or proportion of voluntary chain business covered by instructions of that sort, nor of the extent to which member stores follow them where those instructions are issued. Except in so far as they do
2248 such collective purchasing or bargaining with designation of packers, I should say that the voluntary chain store has about the same relation as the independent dealer.

[fol. 1154] All our car routes are mixed cars loaded with everything a dealer buys from us, such as produce,
2235 refinery products, oleomargarine and soap, in addition to meat products. We have not, for a number

of years, handled canned fruits or vegetables or the
2236 other items listed in the Consent Decree, on our car routes. At present, more than 50% of the cars we operate are carrying penalties of varying amounts, running in extreme cases up to $55, $60, $70 per car. The ratio this bears to the load of the car depends upon the minimum revenue requirement. If the minimum revenue requirement of that car is $90 and we have only enough freight in it to produce $20 revenue, the penalty would be $70. The minimum required is that revenue which would be derived from shipping 10,000 pounds, or whatever the minimum weight is, on the particular commodity on which the minimum rate is based.

It is not a minimum load at 10,000 pounds, but a load which would make up the same revenue as 10,000
2237 pounds of the prescribed shipment. This varies some in different weight classifications, but it narrows down to the point where we must guarantee the railroad company a given amount of revenue per car; that may be $150 or $90 per car, depending entirely on how far the car peddles. The car has to move whether it has a
2237-38 small or large load. It has to maintain schedule service because the trade is depending upon it to get their requirements and must not be disappointed.
2238 If it is not loaded up to the minimum, we have to pay the difference as a penalty, but I do not think the car is required to contain some meat products in order to meet the peddler car requirements; I have never known, even in the days when we handled other products, of a single car that did not contain a fairly good percentage of packing house products. If, in those cars which we move subject to the penalty, we could also load canned goods and other grocery lines to help up the minimum requirement, it [fol. 1155] would save us the penalty. This would not enable us to avoid the payment of freight. We would have to pay the freight on the canned goods just the same
2240 as if we shipped that by local freight. We would not get the privilege of shipping that free; we would have to pay it on each individual shipment of canned goods, but in so far as saving us the penalty is concerned, it would have that effect. While these goods would go into the car at their respective L. C. L. rates to their respective destina-

tion points, it would not cost us any more to move the car loaded with both meats and groceries than to move it with meats alone, so long as the load remained within the minimum requirement. The penalty runs, sometimes, as high as 50% of the minimum, so that in some cases, we
2241 would be able, perhaps, to double the load in the car without increasing the freight charge on what we moved in the car.

2242 While many grocery lines do not require refrigerator cars for proper handling and preservation, we have the cars and we have the service already, and we
2243 ship the cars over given routes.

Whether the car contains 10,000, 15,000, or 20,000 pounds, it does not increase the overhead, the icing cost, the investment in the car, or anything of that kind; the more weight we can put in the car, the less the unit of cost to us. So far as we could put additional canned goods in those cars without exceeding the minimum weight, we would be at no extra expenditure for transportation, and in fact, it
2245 would remove the handicap and disadvantage under which we now operate in our packing house line.

2250 For instance, if we assume that the minimum is 10,000 pounds, and the rate is $1 a hundred, 8,000 pounds at that rate would come to $80, but we would still have to pay $100 to move it in that car. We could then, without paying any more money, put enough groceries or any other specific products up to 2,000 pounds in that car to raise the rate up to $100 without paying out any more
2257 total revenue on the car. I think we must make a distinction. I do not want to get this confused in your mind at all.

[fol. 1156] This does not relieve us of any freight charge at all—it relieves us of a penalty. On the other hand, if we shipped 8,000 pounds of packing house products by
2258 local freight, we would not have to guarantee any
2259 particular minimum. The guaranteed minimum is an incident to our being allowed to send out cars on scheduled routes. Neither does the wholesale grocer sending 2,000 pounds of groceries in regular freight through the local station have to guarantee any minimum. But in our own handling the final effect is that so long as we put additional goods into the car without exceeding that rate base
2263 minimum, however that may be figured, we can do so without paying out any more money than the total

charge of moving the car. Of course, if we then go ahead and put in more groceries or other lines above the minimum, we would have to pay extra on that excess over and
2261 above the minimum at the L. C. L. rate for that product.

2252 Refrigerator cars do not move any differently than non-refrigerator cars in so far as rapidity or frequency of movement is concerned. Our cars operate on a regular schedule over a given route in accordance with the published schedule of freight trains on that route. We do not receive any preferential schedules from the railroads to do that. We simply adapt our schedules from the local schedules on the freight trains on that route.

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(73) CHARLES S. NELSON, district manager, Armour & Company, Lynchbug, Virginia, testified in substance as follows:

2263 My territory, covering Virginia, West Virginia, and Eastern Tennessee and Kentucky, contains 23
2264 branch houses and has a population of 2,300,000 as against 1,990,000 ten years ago.

Richmond, Virginia, with 324,000 population, is our largest branch house town, while the smallest is Mullens West Virginia, with 24,000. All our branch houses in this district were open in 1920 except one, in Beckley, West Virginia, opened in 1928.

We handle fresh meats, provisions, produce, and in a limited way, canned fruits, a little coffee, apple butter,
2282 jams, evaporated milk, preserves, and peanut butter.

We have 98 salesmen, or 35 less than in 1920.

2265 The A. & P. chain has 786 stores in this territory as against 61 in 1920. Of these, 337 have meat departments as against none in 1920.

[fol. 1157] Kroger entered the territory in 1929 and has 245 stores with 123 meat departments.

Pender has 523 stores with 350 meat markets.

2266 Sanitary, new since 1920, has 71 stores with 11 meat markets.

We are, for the most part, unable to sell these chains any butter, cheese, canned milk or pork and beans, because they either have their own brands or sources of supply.

Kroger also has two packing houses at Cincinnati and Columbus, Ohio, and buys its lard from Cincinnati, and I do not contact with their salesmen there.

We sell the A. & P. meats for their Virginia territory. Their West Virginia and Ohio territories are supplied from central warehouses at Pittsburgh and Cincinnati,
2267 and those in Tennessee from Louisville. They deliver to these stores from their warehouses in their own trucks loaded early in the morning or the night before. Kroger has two warehouses in my district; one at Roanoke, and one at Charleston, West Virginia.

2268 In the voluntary chain class, Quality Service Stores have 886 stores with a local secretary or committee that looks after their advertising and buying occa-
2268 sionally of certain car lots like milk, sugar and flour. It is hard to get your products into these stores unless you contribute to their local advertising, and then, sometimes, they ask you for a rebate at the end of the month which goes to maintain this local advertising. 75%
2269 of these stores sell fresh meats, and are regular combination grocery and meat shops.

I. G. A., another voluntary chain, has 245 stores in my district, sponsored by Lewis, Hubbard & Company of Charleston, West Virginia, and operated much the same as the Quality Stores.

Also, in the voluntary list are Reliable Service
2270 Stores in Roanoke with 76 stores, three-quarters of them with meat markets; Nationwide Stores in Danville with 50 stores including 30 meat markets; United in Grafton with 60 stores, of which 40% have meat markets.
[fol. 1158] All of these stores, with or without meat de-
2271 partments, handle cured meats, pork and beans, and butter, and with their private brands it has made quite a difference in my business, created surplus space in our branch houses, lightened our truck loads. Our branches and trucks average 15% or 20% unused space and we have closed up eight branches in my territory.

On account of the development of chain stores and cooperative chain stores, we closed our branch in northern West Virginia, at Elkins, W. Va., at Middlesboro, Ky., and about two years ago we closed our branch at Alexandria, Va. After making a survey there, we found that the chain stores delivered about 50% of the meats and grocery prod-

ucts that were dispensed in that section and the branch was a losing proposition, so we closed it. Then about two years ago, we closed the Morris branch at Richmond, Va., and Newport News, Norfolk, Lynchburg and Roanoke.

2272 At the time we closed the Norfolk branch, the Chamber of Commerce there made a survey and found that through the tidewater section of Virginia about 63 per cent of the meats and groceries were dispensed by chain stores.

There are a great many more independent stores in my territory than there are of all the chains combined.

2278 The chains truck over greater distances from the warehouses to their member stores, sometimes, than we do from our branch houses to our customers. For instance, A. & P. truck from Richmond clear down to Bristol and Johnson City, a distance of 350-375 miles. Of course the combined amount that we sell to all independ-

2279-80 ent stores in Bristol is greater than the combined amount the A. & P. furnishes from its warehouses to its member stores there. And we can truck to the independent stores in Bristol just as cheaply as the A. & P. can truck to its member stores there. However, A. & P. has replaced a lot of independent merchants

2280 there and cut down the purchasing power of the merchants that are left. We have lost the business the A. & P. stores have taken.

[fol. 1159] Local surveys indicated that 50% of the meats and groceries were dispensed by chain stores at

2272 Alexandria, Virginia and 63% at Norfolk, Virginia.

The trouble with our business is a hand-to-mouth buying, as we call it. The orders have decreased from year to year; in the last four or five years there have been more of these private brands and chain stores, and with the Quality Service stores organizing more and more, it has had quite an effect on my business. The independent

2277 merchant who is left has not got the purchasing power. His business is more of the hand-to-mouth business, the same as ours. The latter do not carry the stock they formerly did, and many of them have been very unreasonable in expecting frequent deliveries, sometimes as high as two or three a day. This places those who are in a position to make the quickest and most regular deliveries in an advantageous position as compared with those

who are not,—even in grocery lines, but more so in perishable products like ours.

We have daily public trucking service available two or three times a week out of every town of any size, and
2273 they now can reach many points formerly inaccessible,
2274 because of the development of good roads.

We have been bothered more in the past two years with products killed locally by farmers. As an illustration, I have in mind a coal company that formerly bought from us some 8 to 10 cattle for its 17 commissaries. Some three weeks ago, they notified us that they had made a contract with a farmer who was going to supply their requirements of beef the next four or five months. That kind of business has been growing in the southern field near Norfolk, Williamston and Bluefield. We have lost business. I have in mind four or five large coal companies to whom we were selling beef, lambs and cattle regularly that are now being supplied by local farmers.

This has also cut down our turkey business to virtually [fol. 1160] nothing, as produce people are trucking them in anywhere from 100 to 175 miles. We have whole-
2275 sale grocers at all branch house points, and a majority of them have their own trucks, making store door deliveries over a radius up to 125 miles. Out of the lines we handle, they handle dry salt meats, lard substitute, canned meats, cheese, produce, and some hams and bacon.

If we could handle other lines through our branch houses and trucks, it would help us utilize this idle space,
2276 reduce our overhead, and operate our trucks at full capacity, and would not require any additional expense in these branches, either for salesmen, rents, office force, or management.

2291 (74) T. E. Ray, District Manager, Swift & Company, New York, testified in substance as follows:

My territory embraces greater New York City and surrounding territory in a radius of 50 to 80 miles. I have been with Swift & Company 28 years.

2292 Prior to 1920 we dealt principally with the individual butcher trade. Since then, chain stores have begun handling meat. A. & P. is the major one; also Wil-

kinson & Gaddis, Strauss, American Grocers, Oppenheimer, the Bohack Company, James Butler, Charles Wagner, Daniel Reeves, Gristede Brothers, and Thomas Ralston; also First National, in the tip of our territory. They handle mostly cured meat, but some fresh meat. There are 9,400 chain stores in the New York territory, of which 1750 handle meats.

2293 Wilkinson & Gaddis were formerly wholesale grocers and started handling meats in 1928. They have 328 stores, of which 88 have meat departments, but still sell wholesale to outsiders.

2294 Chain store development has compelled us to expand our sales force and comb the smaller trade to the extreme of good judgment in selling customers that we would have deemed too hazardous some time back. The [fol. 1161] result has shown up poorly, with increased trucking equipment required, and credit losses 50% greater than formerly.

2298 Before we took on this small trade, considerable of it was taken care of by jobbers operating with trucks,
2299 who gathered up products and resold them to this trade. They seemed to stay in business, some of them grew, and I assume it was profitable to them. I
2300 think we are in as good a position as other packers, large and small, to sell to the chain stores what they
2301 buy in meat products; and we do sell to chain stores. But we have sought out this small trade because we have felt we wanted to maintain our broader distribution. We have in my territory between 17,000 and 19,000 regular customers, figuring open accounts. The 9,400 chain stores in my territory represent 50 different systems and take around 8% of the business that flows through our
2302 branch houses, of which about one fifth, or between 1% and 2% of the whole, goes to the largest chain store buyer in my district.

2294 The Gobel Company, a meat processer, operates a retail meat chain in my district; and the HyGrade Company, which has some packing plants, also operates some chain stores.

2295 Petitioners' Exhibit 155 shows the profit and loss results of branch houses at points there listed, during the three periods there indicated. These are merely

representative branch houses. The red figures indicate losses.

2296 The influx of chain stores came in the latter half of 1927, and the deluge of 1928 and 1929.

There are 450 wholesale meat dealers competing with us in Greater New York and vicinity, of which only 25 could be classed as packers, and only 4 or 5 are slaughtering packers who slaughter right in that territory. There are at least 80 others that ship in from outside, including Armour, Cudahy, Wilson, Cudahy Brothers (there are two distinct Cudahy concerns), Morrell, etc.

2298 I assume that practically all the large interstate packers east of the Rocky Mountains do business in our New York market at some time or other, but these 80 or 90 are doing a regular business there.

[fol. 1162] Petitioners' Exhibit 156 was here received in evidence, being certified copies from the Interstate

2304 Commerce Commission of certain documents in the case of the National Wholesale Grocers' Association of the United States against the Directors General, Alabama & Vicksburg Railway Company, et al. The papers offered in evidence are: The petition of intervention of Swift & Company and the order of the Commission allowing intervention, September 3, 1919; the petition of intervention of Armour & Company and the order of the Commission entered September 5, 1919, allowing intervention; a letter dated Atlanta, Georgia, February 10, 1920, addressed to the Secretary of the Commission and signed by Mr. Watkins' firm, with the enclosures referred to therein; and a letter from Mr. Watkins of March 12, 1920, addressed to Mr. Aitchison, signed by Mr. Watkins as attorney for the Southern Wholesale Grocers Association, in cases Nos. 10,745, National Wholesale Grocers' Association of the United States vs. Director General, Alabama & Vicksburg Railway Company, et al., and 10,745, sub number 1, Southern Wholesale Grocers Association vs. Southern

2305 Railway, Director General, Agent, et al.; also certified copies of the opinion and decision of the Interstate Commerce Commission in that case, the first being the original decision and the other being on a sub hearing.

The above case is reported in 62 I. C. C. 375.

2306 Petitioners' Exhibit No. 157 was here received in evidence, being certified copies of the complaint and

decision under the Packers & Stockyards Act in the case of Secretary of Agriculture v. Armour & Company, et al., Docket No. 19.

[fol. 1163] Petitioners' Exhibit 158 was here received in evidence, being a copy of the report of the Honorable George Sutherland and the Honorable Henry W. Anderson made to this Court in this case in their capacity as trustees of this Court, for the purposes stated in the order making them trustees.

2307 Petitioners' Exhibit 159 was here received in evidence, being a copy of a subsequent report made by the Honorable Henry W. Anderson, as surviving trustee, after the resignation of the Honorable George Sutherland to become a member of the United States Supreme Court.

2310 (75) EDWARD A. CUDAHY, JR., President, Cudahy Packing Company, Chicago, Illinois, testified in substance as follows:

I have been with this company since 1905, President for the past 4 years, and Vice President before that.

2311 We have meatpacking plants in Omaha, Sioux City, Kansas City, Wichita, Jersey City, Los Angeles, Salt Lake City, Detroit, and St. Paul; and handle the whole meatpacking process beginning with the purchase of the livestock.

We have 200 car routes and 82 branch houses. We have closed 22 branches since 1920, 11 of those in the last five years. We sell over practically the entire country. The Cudahy packing Company has no interest whatsoever in Swift & Company, Armour & Company, or Wilson & Company, and neither Swift or Armour has any interest in the Cudahy Packing Company.

2313 I know of no agreements between any of us with regard to manipulating market prices in the purchase of livestock or the maintenance or fixation of prices in the selling of the finished product or covering any phase of the business.

[fol. 1164] The competition is very keen in both ends of the business. We use all methods of buying livestock,—salaried buyers and order buyers on public yards, and direct buying from the country.

2314 Our sales to chain stores have resulted in a growing lack of need of the branch houses as a distributing factor, because of their concentrated buying as compared with the ordinary retailer. They tend in the direction of doing their own processing, and no doubt find it, as we have found it, the most profitable end of the business.

2315 Our export business has greatly decreased, due to increased European independence in raising foodstuffs and livestock. This has happened to a number of meatpacking concerns, forcing their products on the domestic market, especially pork products. Cudahy Brothers in Milwaukee before the war probably did 65% of their business in export, and in the last few years have had to change over to a domestic basis of distribution. Cudahy Brothers have been confronted with the problem of whether they would do it by branch houses, which means a considerable investment and expense, or car routes. They have tried both methods and they have not been very successful, since they lost that export business. It has

2316 no connection with our company. There has been a very considerable increase in meat packer competition in the last 10 years, due to this export restriction; also to a decrease in the supply of available livestock, and to the growing smaller factors in the business who have been able to make money where some of their competitors have not. This has been fostered by the growth of chain stores and the ability of the small packers to sell to them in car lots at quite satisfactory prices, and undersell the large packer because of the latter's increasing branch-house burden.

2317 The development of hard roads and motor truck transportation has also strengthened local packer competition, both in the sale of their products and in enabling them to go further for their livestock, where they do not operate on terminal markets.

[fol. 1165] In addition to meat lines, we handle produce and Old Dutch Cleanser. The latter we distribute not through our regular meat outlets but through chain stores and wholesale grocers.

2318 I think that a monopoly in the packing industry is impossible. I do not think any packer or group of packers enjoys the profit to enable them to sell their products so cheaply as to acquire a monopoly, nor that they

could sell them so high as to monopolize the trade, because of the perishability of the product and the necessity of keeping it moving. The only way it could be done, if at all possible, would be to gather in the available supply. This would mean to pay more money than other packers could afford. This would simply cause small packers to decrease their business until there was a different adjustment. That is the advantage of the small packer's position. If business is unprofitable, he does less; but the large
2319 packer takes the available supply that comes to the market, often at a loss. The small packer's business is more elastic.

It is impossible for meatpacking concerns to control either the supply of livestock or the amount of meat consumed or the amount of consumer demand. Consumer demand varies daily. There are so many factors that enter into it, including such as the fish supply on the seaboards, church regulations, fast days, that the market is never stationary.

2320 In so far as our company's attitude is material to the question, we are agreeable to any modification in the Consent Decree of 1920 that the Court may see fit to grant, provided it is made applicable to all concerns.

If one or two leading packers should become able for any reason to sell their product cheaper than their competitors, the public would tend to leave their competitors and pur- [fol. 1166] chase from them instead, in which case the competitors' business would become correspondingly less profitable, and if that trend continued they would have to go out of business; and if this superiority on the part of the one packer continued, the result might be the acquisition of a monopoly.

2321 It is our purpose, as of other business men, to sell our product at a price that will yield us the greatest total profit; and if we were to achieve such a monopoly, and could increase our total profits by raising prices without the checking influence of competition, we would
2322 do so. And if we had been able to draw the public trade away from our competitors and to our business, with the result of a practical monopoly, there would be nothing to prevent our doing so. My answer is based on the assumption made by Government counsel that we would be able to sell our products cheaper than our com-

petitors. I do not think anybody has enough money
2324 to complete the first phase mentioned, which is to sell cheap enough to acquire a monopoly. You will
2326 always find one packer come in where one goes out.

By Mr. Teegarden:

Q. Provided you can do business cheaper than they?
A. That is provided we can yes; but we can not.
Q. I know, but I am dealing with that hypothesis now.

2323 The small packer operates more cheaply than the large packer, so long as he keeps to a restricted territory, both in buying his livestock and selling his product. But if he spreads out into national distribution, with all the expense that goes with it, his costs are not
2321 cheaper. We find ourselves in a position of having to do business every day, whether we like it or not. We have an organization. We have our outlets. We have our trade that looks to us for supplies. We feel
2322 in a good many lines that we have superior products to those of our competitors and we have to stay in the market, whether we like it or not, both in the matter [fol. 1167] of supply, in the operation of our plants and also in the sale of our product.

It is not necessary for one concern or a group of concerns, if cooperating together, to have a control of absolutely every item of business in their line in order to have an effective monopoly. The business understanding of monopoly is, sufficient control of the business to exercise domination in the matter of price.

2325 When I refer to controlling the supply of livestock, I do not mean going into the ranches and producing the livestock, but controlling the price. If I were a small packer and meat prices had been pushed down to such a level that I could not operate profitably, I would restrict my business till the storm blew over. The first place they would go to acquire a monopoly would be the buying end. They would have to depress the price of livestock.
2326-7 That is the big cost factor, although it is still true that the depressing of any cost below our competitors' would tend to place us in a favorable position where we could sell our product more cheaply than they.

Upon Government counsel's assumption that there was a practical monopoly in the only market in which livestock could be sold, it would then also be able to control the purchase price of livestock. If it depressed the price of livestock substantially below the normal price level, it would affect the flow of livestock to the market.

2328 Livestock is really converted grain, and if the price of livestock drops too low, the farmer tends to stop feeding and to market the grain itself in-
2329-30 stead. However, 85% of the corn crop and a large portion of the entire grain crop is fed to livestock, and if this were thrown on the market instead, in large quantities, it would produce a corresponding surplus in the grain market, with the depression of prices [fol. 1168] there accordingly. This change from feeding to marketing would operate principally with the feeder farmers.

2328 With range farmers or producers, depressed livestock prices would cause, over a longer period of time, a tendency to market his calves and breeding stock and decrease his herds.

2329 Where the land on which such livestock is raised is not suited for other agricultural uses, however, its owner would have to go on raising livestock on it and selling it to get any return out of it at all. It is certainly true that the smaller portion of the farmer's costs consists of operating costs, that is, those costs which cease going on when he ceases producing. The rest, his
2330-1 interest on land and equipment, and even his fixed labor cost, must go on; and so long as he can continue producing at a price that will give him some recoupment of these fixed charges, it is to his advantage to do so.

A depression of livestock prices results in the curtailment of livestock production to some extent. For instance, during the war the hog population of the country got up to 64,000,000; but next January the government report on hogs on farms will not be be over 49,000,000. But so long as the farmer can get the best profit on his land only by producing, he must continue to produce. Otherwise his land lies useless on his hands.

In a practical way it has been profitable on an average for the farmer to raise hogs and feed grain. A great many agricultural colleges tell the farmer, "Don't go out of the

hog business when it is unprofitable; that is the time to stay in it."

[fol. 1169] Assuming the existence of such a monopoly, and assuming that it is able to operate with a tremendous
2332 business on a national scale in all parts of the country at costs enabling him to sell lower than the bulk of his former competitors who went out of business, then, in that case, if a local packer should decide that prices are profitable and that he could make some money, and be impelled to go into the business, it would be possible for the national packer to reduce his prices in that local community, sustaining any profit or loss therefrom from his profits on the rest of the country, so that it would be increasingly difficult for this new competitor to do business at a profit. That largely depends, however, on the efficiency of that competitor. We have seen competitors being put out of business all the time but it is due mostly to their own inefficiency.

2333 The elasticity of the small packer, even in the face of a monopoly, is such that he can expand or contract his business, whereas the large competitor cannot. I have one particular firm in my mind that a few months ago was killing 5,000 hogs a week, but he could run and has run at the rate of 30,000 a week. The efficiency of the small competitor would simply go to his power to combat this monopolistic condition. It would not alter the power of the monopolistic packer to undercut the local competitor who might spring up, and sustain his losses in doing so
2333 from his business as a whole. But the monopolistic packer would lose at least ten and probably more dollars doing it, and in a practical way, he could not hold out, could not continue the process long enough, because there would be so much loss in the business, depending upon the number of potential competitors who would try to get into the business against him.

[fol. 1170] Assuming a monopoly, their knowledge of the monopolistic packers' large size and power, and abil-
2234 ity to cut prices locally against any competitor that might spring up would exercise a substantial preventive effect upon them from attempting such competition.

2343-44 Q. With respect to the purely hypothetical state of affairs that Mr. Teegarden assumed in some of

his questions, it is in evidence in this case that there are approximately 1,000 different meat packing concerns operating under the Packers' and Stockyards' Act of 1921, and that their total volume of business in 1929 was approximately $4,500,000,000. While we are in the realm of hypotheses, taking the facts as they are, those figures, and the facts as you know them practically to be, if one concern sold lower than all the others, how long, in your judgment as a business man, could that one concern stay in business?

A. About one day.

2344 A price cutter, cutting prices throughout the country, would put himself out of business.

I know of no method by which you could make consumers buy the article when you put up the prices artificially and arbitrarily. The consumer is, after all, the arbiter of prices, and his demand from day to day is quickly reflected in cheaper and higher priced meats. The Cudahy

2344-45 Packing Company has been in business 40 years and up to this time we have not found any way to make people buy. I know of no way, as the meat business is at present, that we could sell cheaper than all the others, unless we could obtain raw materials cheaper than

2345 all the others for any length of time. Nor do I know of any advantage we have that would enable us to pay higher prices for live stock and sell their products [fol. 1171] cheaper than all others. Any advantage of one packer over others is almost entirely in the better selling of his products. Raw material costs us all, broadly speaking, pretty much the same.

I think that packers could retail meats more

2346 cheaply than the independent dealers, but I do not know that it is a step in the right direction.

The chain store has forced the inefficient, inde-

2348 pendent retailer out and packer retailing would continue the same process, but I think there will always be a place for the independent retailer on account of the business getting ability of human contact and per-

2347 sonal service. To the extent that the packer could sell cheaper than the independent, I see nothing to prevent the latter's patrons from leaving him and going to the packer, and if that went far enough to draw to the packer a monopolistic control of the business, the result

would be a practical monopoly. However, I think
2349 chain stores went too far in price cutting and overdid competition among themselves, and the tendency will be to lessen the difference between chain and independent prices, for the protection of their stockholders.

The packer, as retailer, would have to get a reasonable price, too, although I think he would still be able to sell at somewhat less than the average run of independent competitors.

If packers started retailing, I think their present retail trade would tend to leave them, and can see some advantages of one packer going into retailing and another staying out, and capitalizing his position with the independent retailer. If the leading meat packers should go into retailing on a large scale, they would curtail correspondingly the sources of supply now available to the chain stores for [fol. 1172] their meat supplies, and might impel them to go into the packing business for their own protection. They do not know the packing business and would have greater difficulties in it than they have in retailing. It is easier for packers to learn retailing than it is for retailers to learn packing. In case packers should go into retailing on a substantial scale, it would be more economical and advantageous from their standpoint to acquire existing retail markets than to open new ones, and I think it would be necessary for them to acquire chains, rather than
2362 assembling independent stores.

Likewise, if chain stores should find it necessary to go into the meat packing business, it would be more economical for them to acquire plants already operating rather than to build new ones.

To create new facilities in either case would simply create duplication. There is an ample supply both of packing plant capacity and retail outlets today. The result would be a combination of available packing facilities and available retail facilities which would be the economical combination.

In 1929, our total sales to our largest single chain
2335 store customer were $5,000,000, out of total sales of $267,000,000, and in 1928, $4,300,000, out of a total sales of $251,000,000. Our total sales in 1929 to 8 designated chain store systems was between $11,000,000 and $12,000,000.

Our operations are as broad, territorially, as those of Armour and Swift, but not as intensive: i. e., we
2336 have four branch houses in New York City, as against possibly 26 for Swift & Company. I think we sell more products per branch house than our com-
[fol. 1173] petitors. The alternative to serving particular territory with branch houses is to serve it with car routes, or with carload shipments to large customers, such
2337 as chain stores.

When we abandon a branch house, we either serve that territory from other branch houses, or abandon
2339 it entirely. The territory has to be more populous before it could sustain a branch house, as compared with serving it with car routes.

In a way, distance enters into it when we get so far from our plant of production that it is necessary to have a branch house, with storage facilities, to keep a full line of meat products for the trade.

The placing of a branch house at a particular place represents a choice between the former methods employed and this more advantageous method of handling the increased business. General trade conditions enter into the decision; for example, where there is a local packer who is supplying on a moment's notice the requirements of the trade.

2340 We formerly handled groceries and other so-called unrelated lines through our branch houses, but discontinued it in 1920 upon the entry of the Consent Decree and have not resumed it since. We have no plans as to what we might do in case the decree were modified, but I would say that we would not enter the grocery business. Broadly speaking, there has never been in the fresh meat business, the method of distribution from manufacturer to wholesaler and from wholesaler to retailer, although we do sell to jobbers. In the meat packing business, the branch house generally takes the place occupied in other lines by the wholesaler.

[fol. 1174] There are meat wholesalers other than packers and our concern sells not only to retailers but also to wholesale dealers. There has been a very inter-
2343 esting development in connection with the growth of the chain stores in the city of Boston. Our busi-

ness was almost wholly with jobbers, who, in turn, took the meat and cut it up and peddled it, in a great many cases, in wagons throughout the countryside. It was shipped from jobber to retailer. With the growth of the chain stores, those jobbers are going out of business very fast.

I do not know what we should do as to opening retail stores if the Consent Decree is modified. If Armour
2343 and Swift opened them in sufficient numbers, I think we would be forced to it.

2342-43 There have been so many changes in the past ten years, and I presume there will be an equal number, or more, in the next ten, that I do not think I could sit here and say what we would or would not do.

2340-42 Cudahy & Company do not own or operate fertilizer factories, nor tan hides, nor at this time manufacture soap. The price on hides is less now than in 1920. That is true also of tallow. We
2341 manufacture as many by-products as do Swift and Armour in the meat line. We do not manufacture as many inedible by-products as do Swift and Armour nor do we sell groceries through our distributing houses. Cudahy sells, as shown by the evidence in this case, about six times its capitalization, which is from 60 to 50 per cent higher than the percentage of Swift and Armour. I do not know any explanation for that other than that we utilize our facilities more intensively.

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(76) Dr. Paul H. Nystrom, Professor of the School of Marketing in the School of Business, Columbia University, New York City, testified in substance as follows:

[fol. 1175] I went into the retail business at the age of 15 and, from 1910 to 1915, taught business subjects, particularly in retailing, in the Universities of Wisconsin and Minnesota. I then had charge of the Market Research activities of the United States Rubber Company until early 1917; was Sales-manager of the International Magazine Company until 1921; director of the Retail Research Association, (supported by 17 important department stores scattered nationwide), until June, 1927, and in my pres-
2355 ent occupation since. In the marketing school at Columbia University we carry on studies continu-

ously with the help of our graduate students on specific problems in marketing, and also, in my particular field of work, in consumption. We call it the economics of consumption—a study of what consumers want, and what motivates consumers in their choice of goods. Those are my two fields.

I am the author of "The Economics of Retailing"; "The Economic Principles of Consumption"; "Retail Selling and Store Management"; also a book on textiles for retail sales people, and a pamphlet on chain stores, first published by the United States Chamber of Commerce in 1922,
2356 and revised repeatedly since, entitled "Chain Stores, by Paul H. Nystrom; Domestic Distribution Department of the Chamber of Commerce of the United States".

I first estimated the total food bill of the United States in 1923 and have revised it three times since, the last
2356 time in 1928. The first estimate was published in the Magazine of Business, Harvard University. The methods used were quite rough, and the result can only be an approximation. We shall not have authoritative statistics until the present census of distribution is completed. My two principal methods were:

1st. To summarize the statistics of production of consumers goods, with imports added and exports subtracted, and then with an addition thereto of an estimated per-
[fol. 1176] centage covering the margins of distribution.

2nd. To take the results of several studies of the cost of living which have been made here in the United States in various places, and see what proportion of family incomes are expended for food.

These two methods came out roughly with the
2357 same result, and afforded a check on each other. The result reached was that the nation's total food bill amounts to about $24,000,000,000 of which $3,000,000,000 were estimated to have been consumed at the places of production, leaving about $21,000,000,000 passing through retail channels.

I have summarized a number of cost-of-living studies made since 1918 and 1919 in connection with industrial disputes, with the work of charitable organizations, and with attempts to fix the salaries of public employees at fair rates, etc., and I roughly estimate that for the year 1928, between 4,000,000 and 5,000,000 families, totalling per-

haps 20,000,000 people were living at, or below, the
2358 minimum substance level or standard of living. The consumer's budget averages roughly, for all classes, slightly less than 30% epxended for foods.

Similar studies conducted at and since the time of the World War estimate that close to $2,000 is con-
2359 sidered necessary to support a family of five (man, wife, and three children). Taking into consideration the depression period of 1930, I should say that
2360 the number of people in that undernourished classification is higher now than in 1928. This class of people, we may assume, is definitely underfed, and if meat could be placed within their reach at reduced
2360-61 prices, its per capita sale could be increased, without necessarily decreasing the sale of other foods.

[fol. 1177] A "trend" is defined as a movement, as, for example, in consumption, an increasing use of some commodity or a declining use of that commodity. It is
2361 a movement in the application of some method, let us say, of marketing, such as an increased distribution of products through chain stores, or perhaps a declining distribution of products through the mail order method.

Increasing outlets to the consumer results either in lower prices or additional service to the consumer. Either
2362 one tends to increase consumption.

The following are among the outstanding changes in food distribution in the past 10 years:

2362 1st. The growing importance of the general food store is now quite significant and has come to the attention of all business people as well as students, within the last two or three years.

2nd. Increasing distribution of foods through chain stores.

3rd. Mergers of food manufacturing concerns, perhaps the most outstanding economic fact in the past five years.

The most important factors in chain store competition are:

1st. Its large buying power, permitting it to buy directly from manufacturers in such quantities as the latter prefers to sell, and eliminating part of the wholesalers' and jobbers' expenses.

2363 2nd. More limited service, such as refusal to give credit, make deliveries, or keep stores open as long, all of which reduces operating costs.

3rd. Better management than the independents in many ways, such a choice of location, cost accounting methods, the study of consumers' wants and the elimination of lines not in much demand.

[fol. 1178] The chain only eliminates some portions of wholesale expense, but still incurs a large part of it in warehousing, handling, and supervision, which replaces, to some extent, for instance, the wholesaler's expenses for travelling salesmen.

2365 Chains also can advertise on a scale which the independent store cannot afford. There has been a very enormous movement among independent retailers to club themselves together in voluntary chains in the endeavor to approximate the chain power in buying, advertising, and other economies.

2366 There are wide differences in their operating efficiency, but there is nothing that the chain store is doing that cannot be done equally well by the independent with the exception of quantity buying. Where an independent renders special service, like taking telephone orders, their cost is offset by their value to the buyer.

2367 If chains and independents render the same service, comparatively, the two classes would be equal. There has been and there is now a very rapid and interesting development of general food stores selling everything to be used for the preparation of meals at home. It has come into public notice particularly during the last two years. The general food store offers a splendid means of expanding business as against the other type of small unit selling but one type of commodity, as, for example, the dry groceries.

2368 According to my observation there is not any indication that a saturation point has been reached in the chain store system of doing business. This is true of all types of chain stores. My answer may be modified to this extent, that certain types of chain stores, such as small chain grocery stores selling only dry groceries, have apparently reached a saturation point in some communities, [fol. 1179] but the chains in such communities have increased their volume of business by the adoption of the

general food store, and I have not any doubt that there will be other things happening; new developments in marketing to be utilized, both by chains and by independents, which will cause an increase in growth in the chain stores in lines perhaps not even yet started. The combination food stores are continuing to grow and I think there is a fundamental reason for this growth in consumer
2369 demand. I think that more and more housewives are objecting, or at least are finding it distasteful, to have to buy their requirements for the dinner table at several different stores. The women are finding an increased number of activities which are taking up their time, particularly in our urban life; and to have to go to one place for fruits and vegetables, to another place for meats, another place for groceries and somewhere else for other articles, just kills their time. Consequently, the establishment of an institution that serves their precise requirements, both as to foods and as to time and energy, has every possibility of continuing to grow for some time to come. Some of the retail grocery stores, independent grocery stores, and I take it chains as well, have found that the margin from handling, let us say, the dry grocery line, has been driven down by competition to the point where there is less profit for the owner, and taking on these new lines makes it possible to spread the overhead, including such items as rent, light, heat, insurance, etc., over additional lines, and in that way to get a new lease of life on the profit making.

2370 Mergers of food manufacturers during the last five or ten years have been actuated by the increas-
[fol. 1180] ing cost of marketing, the keener competitive struggle, and the growing buying power of retailers, particularly chains, all of which has made it necessary for manufacturers to stabilize their expenses and put themselves on a parity in bargaining with these large
2371 retail organizations. This they can do by unifying sales organization, and substituting them for brokerage service, reducing warehouse, and to some extent, transportation expenses, and creating a centralized supervision, with resulting reduction of credit losses, and unnecessary advertising expenses. If the four leading packers were permitted to handle non-meat lines, this would add additional competitive factors to the distributive organization, resulting either in lower prices, or improved service to the

consumer, and would afford them in general the
2372 same sort of economy as the chain stores have been able to work out in buying directly from manufacturers. It is a fact that the addition of larger or more competitive factors necessarily makes for either lower prices or improved service. This is almost an inevitable result of increased competition. If there were a further integration of the packing business, taking into consideration the manufacturing functions and the wholesale function now performed by the packer, there would be the possibility of discovery of methods eliminating certain expenses that are now incurred by concerns in branch lines of industry which might be integrated. There would also be the possibility of eliminating the expense of marketing from one branch of the industry to another; of the selling expense and of the time expense. There would be the elimination of credit operations, record keeping, and of credit losses. In general, there would be about the same sort of economy in principle as the chain stores have been able to work out [fol. 1181] in assuming some of the functions of wholesalers in buying directly from manufacturers. That would be the logical result of the packers entering the retail food field. I do not think this would apply if they should confine their retail activities alone to meats. And I am of
2373 the opinion that it would be economically unsound for the packers to attempt to confine their retailing to meats alone.

Integrations may be vertical: that is, uniting the various steps of production and distribution that occur between the first producer of raw materials and the ultimate
2374-75 consumer; or horizontal: that is, combining a large number of concerns dealing in common or diversified products, that compete with each other. Both are going on today in industries of all kinds. With conditions as they are today, I do not believe the question of competitors and their elimination from business is practical in the food industry. First, because of the large number of concerns now engaged in it, and second, because of the relative ease with which new concerns may be established, and existing concerns may expand: and third, the resistance of consumers themselves, who turn to other diets and foods in case they were confronted with coercive measures or un-

reasonable prices. If price maintenance were at-
2378 tempted, sales would fall off immediately, and the lower price competitor would get the business.

2377 With conditions as they are today I do not see the possibility of the elimination of competition, or the crushing of competitors, in the food industry. In the first place, the large number of concerns that are in the business [fol. 1182] preclude that possibility. In the second place, the relative ease with which new concerns may be established, or expand its present activities or capacities, and the resistance that would be met by any concern seeking to restrict competition by coercive measures from the distributive organization, as well as the consumers themselves who if an attempt were made to force them to buy any such product at prices that might seem unreasonable, would very quickly change, in my opinion, to other diets, to other foods, and adjust themselves so they would not purchase the articles that were produced or marketed by an organization attempting a restriction of competition and
2378 whatever goes with that. I do not think that it is possible for any concern or group of concerns to maintain artificial and arbitrary prices in the food industry. If an attempt were made to maintain such prices the almost immediate effect would be that sales would fall off.

Studies conducted by me in 1911 in a middle western state, and by Professor McGary of the University of Buffalo, in 1929, as to the City of Buffalo, show that the
2379 mortality rate of failures among retail grocers is about the same today as it was then. It is higher
2380-81 than other businesses: 30% or 33%, as against 22½% among shoe dealers, and 20% for drug stores.

[fol. 1183] The leading methods that have been employed in the past in forming monopolies include obtaining
2383 control of the supply, or obtaining control of distribution outlets, or setting the prices at which goods are sold, or dividing the market among individual concerns that participate in the monopoly arrangement, as by a division of the marketing territory. Although price agreements do not result in a monopoly until there is an actual combination of the concerns, it may result in the same conditions as a monopoly, namely, the absence of competition.

If one competitor should acquire the ability in some way to sell its products cheaper than is possible to its
2384 competitors, that also would be an important factor in an attempt to form a monopoly, and that ability could arise as the result of a substantial saving in any important item of cost entering into placing the final product before the public. The size of the competitor in the industry, and the portion of the industry he controls are important factors in determining his ability to form a monopoly on the basis of such a lower price, although I do not attempt to say what proportion of an industry a particular concern must control in a particular industry before it can be called a monopoly in an economic sense. Anything less than 100% is not an absolute monopoly.

2385 Theoretically, under the marginal utility theory of price, one exception would tend to set a price for the entire lot; but that does not necessarily hold. According to this theory, if the general price level of meat, for instance, were 35 cents, and one little retail butcher comes in and is able to sell meat at 30 cents, that would bring the [fol. 1184] price level down to 30 cents. But if there were only a little supply offered at 30 cents, he would soon discover that fact and raise his price, because every-
2386 body tries to sell as high as he can. If there is a great supply offered at the lower price, it will pull down the price more than if there is a small supply offered.

In economic principle, the price level depends upon the equation of available supply and effective demand at that price level; and the available supply ordinarily will be that at which those who furnish it can make some sort of
2387 profit satisfactory to themselves. As it becomes scarce, it becomes possible to get higher and higher prices for it. Yet, if the cost of production remains constant, that increases the profits to those who furnish it. With increasing prices, unit profits increase and total profits tend to increase to a certain point; but there is a point where the decreasing demand resulting from an increase in price becomes so severe that a counteraction sets in, and beyond that point the total profit will actually decrease.

In the sliding scale of supply and demand, the price at which the producer or seller can reach the greatest total profit is normally something substantially higher than the

price at which the producer can offer his product at a profit. On the other hand, the price at which the profits are highest may be the point which permits the widest sale; that
2388 is, it is lower than the price which yields the highest unit profit per sale. But, assuming that there is no competition, and I have the power to keep putting up the price on the product, I can put it up through a certain field above the price at which I could make a profit before I will reach that point at which the decrease in demand begins to [fol. 1185] cut down on my total profits. In other words, dealing merely with the price level in its relation to demand, the price can increase substantially beyond the profit level before a decrease in demand actually curtails the increase in total profits.

2389 Assuming that one concern were for some reason able to sell substantially cheaper than its competitors and control 25% of the business of its industry, it would be able to draw the public to its doors until it reached a monopolistic point more easily than another concern operating under the same conditions but controlling only 5% of the business, because the former would necessarily have a wider distribution and more points of contact with
2391 the public. However, 25% would not mean monopoly,
2389 and I do not think it would be a basis or step from which progress could be made toward a monopoly; and I cannot conceive that the 5% concern is going to remain idle and make no plans to save its business.

2391 But if there were two units in the industry, each of which controlled 25% or a total of 50% between them, it would theoretically be correspondingly easier for those two to work toward a monopoly, on the basis of a cheaper price level, than for smaller units to do so;
2392 and easier, also, than for another 50% block of the industry, operating under a similar price advantage in distribution and sale, but divided up among a great many concerns.

The number of units among which the remainder of the industry is divided is also an important factor; that is, if the remainder of the industry is divided among comparatively few units, large in size, it would theoretically be more difficult for the two 25% concerns to acquire a monopoly than if the remainder of the industry were divided up

among a great number of units correspondingly smaller in size.

[fol. 1186] I have seen statements to the effect that from 65% to 70% or 75% of an industry is the range of
2393 control recognized among economists as constituting effective monopoly for price control purposes. But much depends upon the conditions of the industry and the type of the product. If it is the type of product for which there is no easy substitute, that might be important; or if it is a type of product that has a limited number of consumers, then that might be very important. If it is a type of product in which the number of producers of similar products was great or small, all of those would tend to affect the situation as to control.

I should not like to have my testimony recorded as agreeing that 65% or 75%, or any other figure, constitutes the same thing as a monopoly. That is simply the range of economic thought.

The number of able independent competitors in the industry is another factor that would tend to raise or lower that percentage. If the remainder of the industry
2394 is divided up among a great many comparatively small competitors, the percentage necessary to monopoly control would tend to be lower than if it is divided up among a few able competitors.

There are, however, practical qualifications to these theoretical principles. The small concerns, though small, may be very effective in meeting competition when placed under pressure. For example, in the retail grocery trade—and you could scarcely find any industry in which the units were smaller and less efficient, perhaps, in the operation of their business, and less capable of cooperation in this field—with the coming of the chain stores and the fear that the chains might affect not only their success but their existence, they have come in very great numbers to form these new voluntary chains which are really cooperative groups and some of them very effective and very successful.

[fol. 1187] The Retail Research Association, with which I am employed, was such an organization in the depart-
2395 ment store field, and we developed a very considerable buying power for those stores. I do not know the extent to which voluntary grocery chains buy meats for their member stores through these concentrated sources,

but I think Mr. Pelz's documents furnish the best statement there is on the development of the grocery voluntary chains and the extent to which they do concentrated buying.

There is recognized among economists what is
2396 known as the principle of diminishing economies in large-scale business, to the effect that small producing units cannot achieve all the economies of large producing units, and there is an increasing efficiency in large-scale production until some theoretical point is reached, which again depends on many factors for varying industries which change from time to time as the knowledge of busi-
2397 ness processes changes. But after it reaches and passes that point, the business may remain in a static condition or it may show a decreasing economy per unit of product. In the chain store field it has apparently been found by the larger chains that they may be able to effect a remedy for just that situation by subdividing the chain into district operating units, territorial units, getting back to what they evidently believe to be the most efficient operating units, in other words, decentralization of control.

2398 In so far as that decentralization affects purchases of chain stores of the products handled by them, it would tend also to affect their buying power and decentralize it accordingly; and it has done so. The most outstanding example is the Great Atlantic & Pacific Tea Company, and the result is a tendency to break up this buying power [fol. 1188] which has attached to the centralized control of the chain.

2398-99 When an industrial unit has reached the stage of diminishing economies, I believe, theoretically, without any knowledge or facts upon which to base my answer, that there might be some ultimate advantage to be gained by increasing the size of the business. That is, by curing the costs of bigness by more bigness, through the opening up of new markets and increasing the number of commodities handled. That is, diversification. Combinations such as General Foods and other concerns which have taken place in the last few years are apt to occur
2401-2 at times when conditions are very favorable for the sale of securities. It is generally true that when such combinations take place, the new resulting combinations' capital is apt to be based not only on the actual investment, but very largely on the earning power. So that

the result would follow that following the combination, profits would have to be increased if the same rate of profit was to be paid on the new capitalization as on the old. In forming food integrators such as General Foods—without stating that General Foods is guilty of anything to which I might refer, if any element of guilt attaches—an endeavor is made to get a collection of companies whose earnings have been good. The stock of the new company is then offered to the public on the basis of the previous earnings of the constituent companies as pointing to probable earning power of the consolidation. But there is a qualification to that and General Foods is one illustration of it. The growth of buying power of the chains has made it more and more difficult for manufacturers whose products are sold through such channels, to maintain not only their old net profits, but any net profits at all. So that, as one of the officers of General Foods expressed to me, it has become essential in dealing with large chain stores with large buying power, to have large selling power.

[fol. 1189] General Foods represents an integration of non-competing products. Any particular distributing organization might be quite powerful in bargaining with the company producing that product, if there is but one product in question. But if there are several products, many in fact, that are well known to the public whose brand names are common knowledge to everybody, then there is strength in bargaining power that comes to that company, in spite of the fact that the percentage sold to the big chain organizations remains the same as it was before.

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I am informed that General Foods treats all re-

[fol. 1190] quests by chain organizations for concessions in prices the same as they do every other arrangement made with the trade, namely, no concessions will be made. They maintain that position, because it would be dangerous for them to change that position, to making concessions which would open them to attack for such concessions on every hand. It all depends upon keeping your largest customer at such a small proportion of your business so that you will have other channels to depend upon if you have to surrender that customer, or else having so many products that he must have even if in large proportion, that the bargaining power may be on a parity on both sides. I do not necessarily mean

a monopoly on those products, but there is I take it a bit of monopoly in the trademarked article that has a very strong good will. I have heard that Royal Baking Powder, for example, have been offered several million dollars for the name alone. There is a value there and while there are many substitutes for Royal Baking Powder, I think most chain stores would not like to go on conducting their business and
2406 have housewives come in and ask for Royal Baking Powder and have to spend time in telling them about some competing brand.

2407 The branded articles, when backed by such an organization as General Foods, have undoubtedly been a strength in selling to chain stores. It is my information that they have made no such concessions to chain stores in prices or other services that have been made by other concerns without brands or with weak brands.

2408 Several things are happening in the wholesale grocery trade. Some wholesalers are becoming manufacturers. Others are owners of plants and have goods manufactured for them. Other wholesalers are slowly but surely acquiring ownership and control of retail outlets. Others are making arrangements by contracts or otherwise for what is usually known as voluntary chains, so that they [fol. 1191] may be assured of outlets. Still other wholesalers are leaving the old-time business of supplying all kinds of groceries, or whatever their original line of products might be, and are specializing in handling a few of those products, perhaps becoming a distributor for a certain territory for certain branded goods. That has happened in many cases; or becoming a special distributor for imported goods, specialties. All sorts of variations are taking place. The old-time wholesale grocer has had a hard time of it for years. If the whosesale grocers, during the last few years, had not made progress along the lines that changed conditions require, many of them would have been forced out of business completely. Adjustability and adaptability to new conditions has been quite observable in the wholesale grocery field.

2409 Counting all concerns in the wholesale grocery business, including those that have gone into the specializing businesses, there are more wholesalers now than there were ten years ago; there are over 6,000 whole-

salers, and that is probably almost a thousand more than there were ten years ago.

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(7) HAROLD H. MAYNARD, Professor of Marketing, College of Commerce, Ohio State University, testified that he had served in this capacity for something over seven years, and, in addition, had served from time to time as consultant with business concerns in the United States, studying their business and making different types of surveys and research analyses such as rendered by a marketing consultant. I am a co-author of the text book "Principles of Marketing," which is a commonly used text book in colleges over the country, and I am also co-author of a further text book known as "An Introduction to Business."

It was stipulated by counsel that Professor Maynard's [fol. 1192] remaining testimony, if further examined, would be to the same substance and effect as that of Dr. Paul H. Nystrom, both on direct and cross examination, with respect to trends, chain stores, food mergers, competition, monopoly, etc., and that such testimony should be considered in evidence.

Professor Maynard then further testified in substance as follows:

Chain stores are scattered through small country towns and trading centers as well as in large cities. No minimum population seems to have been reached for their purposes.

The importance of brands is the control of consumer demand which follows brand acceptance or brand insistence by the public. This is what practically all manufacturers of advertised brands are trying to secure. It is based upon successful experience by the consumer with the article branded, and his confidence in his ability to get constant quality and quantity under the brand designation, and for that price. The brand is everywhere the same in all markets in all parts of the country, and its persistence depends upon maintaining its standards of quality and quantity at minimum price.

The minute it ceases to do so it lays itself subject to attack, either by other nationally advertised brands or by private brands in general.

2421 While I have no specific information, I should think the meat business end of a normally balanced
2422 combination store would run 25% or 30% of the store's total sales. Single wholesaling concerns such as Francis H. Liggett, who pack private brand merchandise, sometimes supply more than that percentage of their total volume of business to many grocery
2421-22 stores; but, of the so-called food integrator manufacturers, I think General Foods Corporation would supply the largest percentage, and I doubt if that would be 25%.

[fol. 1193] Diversification of lines would be very helpful to the meat packers for a number of reasons. It
2417 would enable them to use their present physical properties, sales organizations, delivery equipment, credit organizations, and branded names to better advantage. Diversification would be very valuable and desirable due to the fact that they have this tremendous organization setup which is not working at capacity. From the standpoint of an economist and one interested in public welfare, it would be very desirable for them to be able to use this structure which has been built up to a greater advantage and to the fullest extent.

2423-24 (78) Dr. Fred E. Clark, Professor of Marketing, Northwestern School of Commerce, Evanston and Chicago, Illinois, testified that he is also author of a book, "Principles of Marketing," and another, "Readings in Marketing," both of which have been widely adopted; also of a number of articles in technical, economic, and trade journals, and is joint author of a book on marketing farm products, now being completed.

2425 Changed conditions and trends in the food industry during the past ten years have been very marked. There is the trend toward integration on the part of all the factors in the field, manufacturers wholesaling, to some extent retailing, wholesalers doing their own manufacturing, controlling their own brands, operating retail stores or having connections with retail stores, retail store organiza-

tions combining together and doing their own wholesaling, and in some cases a part at least of their own manufacturing; and the tendency also of the producers of the raw materials to combine and do all of their own wholesaling in selling to the manufacturers, retailers and others who use or handle their products. Then another very important tendency in recent years, is the emphasis being placed upon [fol. 1194] the development of brand consciousness on the part of the public. There is a tendency toward bringing together a number of related products on the part of manufacturers, and in the retail field a very important tendency —I am of course thinking now primarily of food, although we have had the same tendency in many other fields—for stores to branch out into related lines. We have it in the drug field, but more particularly in the combination store in the food field.

It was then stipulated by counsel that Doctor Clerk's remaining testimony, if examined, would be to the same substance and effect as that of Dr. Paul H. Nystrom, both on direct and cross examination, with respect to trends, chains stores, food mergers, competition, monopoly, etc.

[fol. 1195] (79) CHARLES E. BALDWIN, Assistant Commissioner of the Bureau of Labor Statistics, United States Department of Labor, Washington, D. C., testified in substance as follows:

2432 This Bureau collects and issues data regarding wholesale and retail prices, cost of living, and increases or decreases in the wage scale.

Petitioner's Exhibit 160 is the June, 1930, issue of the Bureau's publication: "Prices, Wholesale and Re-
2433 tail, and Cost of Living." Page 6 gives index numbers showing percentage changes in the prices of various commodities since 1913, based on prices for that year. Pages 27 to 29 shows relative wholesale prices on food products for June, 1929, and May and June, 1930, as compared with 1926 prices as a basis.

Since the base used is different, these prices cannot be compared with figures representing retail prices on
2438 page 6 until they are converted to the same base, which is not done here.

The table on page 33, however, uses the same base year (1913) as page 6, and the two together show that while retail prices have increased from 13% (on butter) to 100% (on ham), living costs show increases ranging from 47.9% (on food) to 108% (on miscellaneous items). That
2439 is, the increase in food costs since 1913 has been the least of any of the items of living cost, listed on page 33.

Page 33 shows by index numbers, changes in the
2434 cost of living with respect to certain items, as compared with 1913. Pages 5 and 28 contain graphs visualizing changes in retail and wholsale prices.

[fol. 1196] Petitioner's Exhibit 161 is the Bureau pamphlet "Union Scale of Wages and Hours of Labor, 1913
2435 to 1919, Preliminary Report," and page 28 shows by index numbers, changes in wage rates, 1907 to 1929, with those for 1913 as a basis. The corresponding figures for 1930 have been added in pencil on the basis of compilations just completed. These tables use the same year base as the table of retail prices on page 6 of Exhibit 160; and the two show that while union wages have increased 172%, the average retail prices for all food
2640 commodities have increased only 47.9% since 1913.

2442 (80) Robert V. Fleming, President, Riggs National Bank, Washington, D. C., testified in substance as follows:

2443 My business requires us to keep in close touch with information relating to the fair rate of return on investments throughout the country, as we have a lot of customers from out of town that demand the national money market rate, and changes in those rates may affect the price of investments we hold, and others that we
2444 control through our Trust Department.

In order to place securities of a given corporation on a parity with others in the same general lines, its earnings must be sufficient to allow them to pay a fair return to stockholders on their investment, and have sufficient earnings above that to build up reserves for loss, betterments, etc. Bank stock sells on a lower return basis
2445 than industrial stocks.

The percentage of gross earnings to net profits,

capital, surplus, and undivided profits, of all member banks of the Federal Reserve System averaged 8.66% for 1927; 8.96% for 1928; 8.75% for 1929.

Railroad and public utility stocks normally rank higher [fol. 1197] as sound investments than manufacturing concerns, such as the food or meat packing industries, because they were subject to certain protections that an industrial corporation does not have.

2447 In arriving at the earning power of money in different investments for purposes of the capital stock tax a few years ago, the United States Treasury allowed for an earning power of 10% on certain classes of industrials, such as foods, and 8% on banks. The food manufacturing industry should have over 10% return, allowing for depreciation, depletion, and items of that sort, to constitute a minimum fair return on capital invested. That is, a 10% return on the capital that their stockholders had invested in the business originally.

The return must be sufficient to pay stockholders a fair return on their investment, equal to what would be paid in a competing industry, and to allow it to build up reserves for contingent losses, betterment, research,

2448 and items of that sort. If an industry fails to earn a fair return on its capital invested, its securities depreciate greatly in value. They have difficulty in obtaining bank credit at times when they need it, and if they are not getting a fair return ultimately enough to build up reserves for all unforeseen contingencies, they are going to be in difficulty. If the earnings of the corpora-

2449 tion are not sufficient to justify the proper return on the investment to the stockholder, when they apply for bank credit, the banker of course is looking to see whether the corporation that borrows from his bank can repay out of current earnings, and if their earnings are low the chances are they are not going to get very much bank credit. Then again, they may need additional capital for expansion and they are not in a position to get that capital on favorable terms. All bankers now require in connection with large loans, in addition to statements of [fol. 1198] assets and liabilities, profit and loss statements to see what is happening to earnings. If earnings are dropping off, the banker is going to look with fear on the

prospect of getting that loan paid. The stocks of
2450 large industries are traded in freely on the stock exchanges of the country. The stocks of Swift and Armour are not traded in as freely as the securities that have better earning returns. The public is not likely to invest in securities when the curve of earnings is down. When that occurs the market price of the securities is discounted. The drop in earnings is usually reflected in the price of the stock even before a dividend cut.

2459 Deterioration of machinery and equipment would not enter into it, because if it were properly depreciated and if the corporation was in a healthy condition, it would be replaced by new equipment that would replace the capital structure. The capital invested at all
2460 times should be able to have that return, including any surplus in the capital account, because that belongs to the stockholders, too. If there were no surplus, and depreciation required an impairment of the original capital, then the return would have to be on the capital, as of the time we are speaking.

This 10% return should be what is left after all
2462 expenses are paid, taxes are paid, and depreciation
2463 and all losses are written off. And also after reserves are written off to meet unforeseen losses.

2461 Returns that farmers are getting on their investment are very low.

[fol. 1199] (81) F. A. Pearson, Professor of Prices and Statistics, New York State College of Agriculture, Cornell University, Ithaca, New York, testified in substance as follows:

I have served in this capacity since 1920, spent a year at Harvard prior to that, and was, from 1912 to 1920, with the College of Agriculture, University of Illinois, Urbana, Illinois. I am co-author of "The Agricultural Situation," published August, 1924, dealing with prices of farm products, primarily, and of several other studies, one concerning the relation of supply of commodities to their
2466 prices; another, of the cost of distribution, including
2467 the cost of distributing beef, published in "Farm Economics" for January, 1928, by the Department of Agriculture, Cornell University.

These are based on farm prices of live stock furnished by the Department of Agriculture, and retail prices furnished by the Bureau of Labor Statistics of the Department of Labor. The former represents prices received by the farmer, and the latter, prices paid by consumer at
2467 retail. The retail prices are weighted in proportion to the cuts that could be obtained from the animal, to obtain the retail price of the steer. The difference between this result, and what the farmer obtained for the steer, represents the cost of distribution.

The results of this study are summarized in Peti-
2470 tioner's Exhibit 162, which is a chart reproduced from page 832 of "Farm Economics," for January, 1930, with figures added to bring it down to August, 1930.

Petitioner's Exhibit 163 is a chart reproduced from page 833 of "Farm Economics" for January, 1928, show-
2471 ing graphically the relation between retail value of the steer, the farm price, and the cost of distribution.

[fol. 1200] These exhibits include the adjustment for the fact that there are some inedible parts of these animals. According to a study made by Mr. Clemen, the edible portion reporesents 87.3% of the animal, by value, as
2475 against 54%, by weight.

2474 The average retail value of products shown in the fourth column of Petitioners' Exhibit 162 includes the cost of distributing meat products and by-products.

2477 The primary cause of fluctuation in retail prices is not a change in the farm price. The primary cause is the change in retail prices which are reflected in farm prices. In other words, the ultimate consumer finally determines the price. From this final retail value the cost of distribution is taken out and the residual is the farm price. The actual price at which meat goes to the consumer is dependent upon consumer demand and the amount available at the retail markets. That is the primary determination of price and that is reflected back gradually through the wholesale lines into the raw material.

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(82) R. F. Eagle, Assistant to the President, Wilson & Company, Chicago, Illinois, testified in substance as follows:

2479 This concern has been in existence since 1916, and I have been with it and its predecessors, Sulzberger
2480 & Sons Company, for 17 years. It is in the meat packing and provision business with headquarters in Chicago, and together with its subsidiaries, operates meat packing plants in Chicago; New York; Albert Lea, Minnesota; Nebraska City, Nebraska; Cedar Rapids, Iowa; Kansas City, Kansas; Oklahoma City, Oklahoma; and Los Angeles, California.

It sells throughout the United States and in the
2481 principal market outlets of the world, and has 97 branch houses today as against 117 ten years ago, having closed 35 and opened 14 in the meantime. It has no stock or other ownership interest in Swift & Company, Armour & Company, or Cudahy Packing Company, and none of them has any in it. Nor do any of these have any agreement between them with respect to prices paid for livestock in any of the markets, nor those asked for finished [fol. 1201] products in any territories in which they are sold.

We have 1,450 refrigerator cars, which is some
2482-84 less than in 1920, and operate 410 car routes, running from 80 to 250 miles in length. The latter represents some increase in the past ten years, partly from closing branch houses and partly from expansion in some territories which seemed to be better adapted to car routes.

The largest portion of our packing business is in
2483 fresh meat products as against branded products. We buy livestock both through our employed buyers, on public markets, and buy direct shipments at our country plants, and through order buyers to some extent. On public markets, we get the competition of the larger packers, and also the smaller packers as far as the western and eastern seaboards.

We are agreeable to any modification of the Consent Decree, provided it is made equally applicable to all defendants.

Our total sales in 1929 were $310,000,000, of which
2492 a very small part was in the so-called unrelated lines.

Petitioners' Exhibit 164 is a retail price list which we furnish to our customers, showing retail prices which we suggest they should charge to their trade. The last page

contains items such as preserves and condiments,
2492-93 which belong to the so-called unrelated lines.

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(83) JOSEPH CONRON, President of the Conron Brothers Company, 40 Tenth Avenue, New York City, testified in substance as follows:

2493 We deal in wholesale meats, poultry, butter, eggs, and some cheese. We do no slaughtering, but buy our dressed meats in New York and different western points, and some live hogs, which we have custom
2494 slaughtered by an abattoir company in Jersey City. We have one meat processing plant in New York handling pork products; also produce plants where we buy, feed, and slaughter live poultry for the New York market, at Fairmont, Minnesota; Atlantic, Iowa, and Bushnell, Illinois. At these plants, we also handle cream and eggs; and manufacture creamery butter and ice cream. We have another such plant in Virginia, now temporarily closed down, and rented to a party using it for the milk [fol. 1202] business. We have four selling branches in greater New York, and an office in Chicago. We also own the Riverside Cold Storage Company, which oper-
2496 ates cold storage plants in New York and Brooklyn. We also act as consignee for the products of the Indianapolis Abattoir Company, and in that capacity, sell them in competition with our own in New York.

We buy hogs wherever we can buy them the lowest in competition with other packers, and do business with Armour and Swift if we can get low enough prices
2497 from them. We have never come in contact with any unfair methods at their hands. Conditions are very competitive in the wholesaling of meats with from 200 to 500 wholesalers in greater New York. Our business has grown from $10,000,000 to $15,000,000 in the past ten years.

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(84) GEORGE N. PFARR, President of the California Co-operatives Canneries, Modesto, California, testified in substance as follows:

2499 I have had a fruit farm near Modesto since 1912, growing cling peaches and raisin grapes; have been a member of the California Co-operative Canneries since

the winter of 1919; a director since 1923; vice-president, 1925 to 1927, and President since 1928. It is a co-operative organization of fruit growers for the purpose of processing and selling their cannable products, with around 300 grower members, who grow peaches, pears, apricots, asparagus, peas, spinach and sometimes tomatoes. Our concern cans these various lines and has plants at Modesto, San Jose, Visalia, Ontario, Hemet, and Isleton,
2501 California.

We handle about 5% of the canned peaches, pears, apricots, asparagus and spinach, and 90% to 95% of the peas in California. The latter is not an important crop. Our peach pack the past season was nearly 15,000 tons. Our present distribution method is a wholesaler-retailer brokerage proposition.

[fol. 1203] We sell to chain stores sometimes directly, sometimes through brokers, and frequently to other
2502 canners. In 1920, we had a contract with Armour & Company for them to take all of our supplies that they needed in their business, and they were taking from 60% to 80% of our sales. This fell to nothing during the period from 1921 to 1925; came back to 50% from 1926 to 1928 and fell again considerably in 1929 because of the Supreme Court's decision upholding the Consent Decree, and they did not take any of our products.

In 1930, we arranged for them to handle our products on a consignment basis, which included quite a hold-
2503 over from the previous year. There has been a lot of opposition to us in the brokerage wholesale and retail trade in the past ten years.

Our situation was different than the ordinary canner in the state because we did not have finances to properly develop a sales organization and primarily a cooperative institution never does have that financing to develop a sales organization which can take care of its product.
2519 Our concern was organized in reliance upon the contract made in 1919 between Armour & Company and the Producers Warehouse Co., which was the name of our concern before it was changed to California
2503 Cooperative Canneries. If it had not been for the assurance of that outlet, the California Cooperative Canneries never would have sprung into existence. Had we not had at that time an outlet which would

2504 take the greater portion of our supply, we never would have entered into the game and try to sell through the brokerage wholesale trade.

2519 It was stipulated that the Government's Exhibit 6 is a copy of the contract here referred to by the witness, made May 9th, 1919, between Producers Warehouse Company, James Madison, President, and Armour & Company, Arthur Meeker, Vice-President.

The canning business is too risky and expensive for growers to go into unless their market is practically secured. We have no distributive system of our own, except a sales manager, who makes contracts with

2504 brokers and wholesalers. This we find unsatis-

[fol. 1204] factory, because the wholesaler tries to buy at the very lowest price, and a complete distributive system with warehouses, salesmen, etc., scattered over the country requires too much financing for a grower

2504-05 organization, whose members' money is invested in growing.

We are at a disadvantage in competing with large canners like Libby, and the California Packing Corporation, which handles the Del Monte brand, in being unable

2506 to furnish less than carload lots on favorable terms. We have supplies of canned goods stored with brokers in New York City, Norfolk, Los Angeles, Dallas, Fort Worth, and Tampa, Florida, but that is about all. We have to keep these brokers and wholesalers stirred up with calls from specialty men, and pay the broker

2507 his commission, which we find very expensive.

We are also at a disadvantage unless we can put out our products under nationally advertised brands, and to do this, we have to sell it to the Del Monte people or other national advertising people, or quit business. Armour sold our products under Armour or Morris brands.

2508 We have a tremendous crop of peaches in California, the potential production being 400,000 tons of Cling peaches and deducting the cull peaches, there are 350,000 tons of Cling peaches to be processed in cans amounting to about eighteen or nineteen million cases. We had never ben able to sell more than fifteen or sixteen million cases, and in 1930 with this excess crop, the peach growers of California found themselves in a position where

they would not get enough to pick the peaches from the trees and deliver same to the cannery doors unless something in the nature of control was put into effect.

2509 We entered into a control plan, and under that plan
2510 the canning industry of California picked close to 150,000 tons of No. 1 peaches and let them drop on the ground and rot. It cost us around $2,000,000. It cost each canner who put up a ton of peaches $7.80. Under the control plan he paid $20 to the grower for every ton of peaches and he put $7.80 into a reserve fund to buy the peaches.

[fol. 1205] They were permitted to rot in order to save the industry.

In 1930 there were more grapes in California
2510-11 than anybody could ever use. I sold my grapes to the Grape Control Board, which is a cooperative that was set up to do for the grape industry the very same thing that the canners themselves did for the canning industry. The Grape Control Board was set up and financed by the Federal Farm Board. Mr. Teague, who is a member of the Farm Board, spent, I dare say, the hardest two months to ten weeks of his life in California trying to get the thousands of grape growers to go into one big cooperative in order that they could loan a part of this $500,000,000 which Congress voted them for farm relief.

2512 The peach grower realizes that 1931 and possibly 1932 will find him in a position where he cannot claim a seller's market, that is, he cannot demand anything for his product. He has got more product than the canner or consuming public would probably want. I just received a telegram from the University of California, which has called a meeting for tomorrow of those interested in the canning and growing of peaches, for the purpose of seeing what should be done with this apparent surplus at this time. If there were more dependable
2513 outlets and a greater range of advertised brands, it would aid in providing a remedy for this problem. If the distributive system of the country was more efficiently organized, so that they could get this fruit to the consuming public, California could not begin to raise enough fruit for the United States and the world, because

we are practically the only fruit-growing country of that kind in the world.

If Armour & Company cannot handle our product, we would have to fall back on the brokerage, wholesale system, and unless they also change their methods of operation, instead of trying to sell 100 or 1,000 different brands, and concentrate on two or three brands of their own, such concerns as ours and a number of other canneries, will be out of existence, because the business is being taken by those concerns who do have nationally advertised brands.

[fol. 1206] Armour and Company holds a mortgage of $500,000 on three of our plants, of which $200,000 is a first mortgage on one plant, and the balance a second
2515 mortgage on the other two. Beside- this, we owe Armour & Company between $900,000 and $1,000,000, to offset which they have warehouse receipts on $200,000, and actual possession on consignment of $600,000,
2516 or a total of $800,000 of our products. We had to borrow this to supply ourselves with working capital.

Also, Armour & Company guarantees our account for the purchase of cans, on which we owe at present $350,000.

By stipulation of counsel, the following described Petitioners' Exhibits were admitted and received in evidence:

Petitioners' Exhibit 165, being a copy of certain
2528 excerpts from brief on behalf of Armour & Company et al., filed September 12, 1920, in Docket 10745, before the Interstate Commerce Commission.

Petitioners' Exhibit 166, being a copy of certain excerpts from briefs of the National Wholesale Grocers' Association in Docket 10745, before the Interstate Commerce Commission.

Petitioners' Exhibit 167, being copies of the complaints in I. C. C. Dockets Nos. 10745 and 10745-sub 1.

2529 With the above evidence, petitioning defendants rested.

The following evidence was then received on behalf of the United States:

By stipulation of counsel, statements under oath prepared and furnished by JOHN M. CHAPLIN, Comptroller of

Swift & Company, Chicago, were received in evidence, showing in substance:

1. That annual purchases of vegetable oil by Swift & Company, including cottonseed, peanut, corn, and other [fol. 1207] vegetable oils, refined and unrefined, but here computed on a refined weight basis, increased from a total of 86,000,000 pounds in 1921, to a total of 161,000,000 pounds in 1930, figures for 1920 not being available.

2. That the annual production of cottonseed oil by Swift & Company increased from 47,000,000 pounds in 1920 to 68,000,000 pounds in 1930; that the number of mills at which said cottonseed oil was produced decreased from 18 in 1920 to 16 in 1930; and that such mills are located at as many different cities in the States of Georgia, South Carolina, Tennessee, Arkansas, Alabama, and Texas.

3. That the total annual output of cottonseed oil by refineries owned or controlled by Swift & Company increased from 160,000,000 pounds in 1920 (produced by ten refineries), to 237,000,000 pounds in 1930 (produced by 13 refineries).

4. That the total annual purchases of cottonseed by Swift & Company increased from 154,800 tons in 1920 to 227,573 tons in 1930.

[fol. 1208] The following is a statement under oath, prepared by WILLIAM S. CLITHERO, Assistant Comptroller, Armour & Company, Chicago, Illinois, and received in evidence, showing total production by Armour & Company and Morris & Company combined in crude cottonseed oil, refined cottonseed oil, and lard compounds and substitutes, and a comparison of such production with the corresponding total production for the United States, for the years therein indicated from 1920 to 1929:

STATEMENT AS TO PRODUCTION

Crude Cotton Seed Oil Production

	Total U. S. Production, Thousands of Pounds		Armour & Morris Combined Yearly Production	% Armour & Morris Production of Total U. S. Production
	Monthly Production	Yearly Production		
Year 1920	95,223	1,142,676	23,847	2.08
" 1929	131,801	1,581,612	19,673	1.24
% Increase 1929 over 1920		38.4		
% Decrease 1929 under 1920			17.5	

*Refined Cotton Seed Oil Production

	Total U. S. Production, Thousands of Pounds		Armour & Morris Combined Yearly Production	% Armour & Morris Production of Total U. S. Production
	Monthly Production	Yearly Production		
Year 1920	81,645	979,740	Not Known	
" 1929	120,842	1,450,104	85,760	6.

**Lard Compounds and Substitutes Production

	Total U. S. Production, Thousands of Pounds		Total Armour & Morris Yearly Sales	% Armour & Morris Total Sales is of U. S. Production
	Quarterly Production	Yearly Production		
Year 1920	.....	.....	113,346	....
" 1921	156,770	627,080	122,958	19.6
" 1922	196,045	784,180	102,562	13.
" 1923	187,631	750,524	96,915	12.9
" 1924	207,609	830,436	121,887	14.7
" 1925	288,155	1,152,620	166,540	14.4
" 1926	285,177	1,140,708	164,709	14.4
" 1927	294,749	1,178,996	190,111	16.1
" 1928	285,737	1,142,948	163,542	14.3
" 1929	305,025	1,220,100	164,936	13.5
Total	2,206,898	8,827,592		

*See page 83, Survey of Current Business, August 1930, No. 108.
** " " 86, Ditto. (Semi-annual Number.)

[fol. 1209] The following stipulations by counsel for the parties and interveners were received in evidence:

FIRST STIPULATION

2531-36 In the matter of petitions by the Armour and Swift groups of defendants for modification of the consent decree herein made and entered February 27, 1920, it is hereby stipulated by and between said petitioning defendants, United States, and the interveners, National

Wholesale Grocers' Association, and American Wholesale Grocers' Association, by their respective counsel of record:

1. That the corporations named below are engaged in the manufacture and/or purchase, distribution, and sale of food and other products throughout the United States as in each case respectively indicated, with principal offices at the addresses stated; that the total sales of such concerns are in every case under $350,000,000 per year; that the total sales of four of said concerns are between $100,000,000 and $350,000,000 each per year; that the total sales of the remaining said concerns are under $100,000,000 per year.

2. That the proportion of the total sales of each said concern which is sold to its largest single customer is in each case at least the percentage respectively stated.

[fol. 1210] 3. That in the case of five of said concerns the volume of sales by each to its largest single customer respectively is in excess of $10,000,000 per year.

4. That none of said concerns sell at retail the products manufactured or distributed by them in any substantial quantities, with the exception of:

(1) National Dairy Products, Inc., as to the fresh milk, cream, and buttermilk sold by certain of its subsidiaries;

(2) Adolf Gobel, Inc., as to retail meat sales through the Merkel chain in Brooklyn, New York, and sales of refreshments through its refreshment concessions.

5. That none of said concerns are engaged in the meat packing business as slaughterers, with the exception of Adolf Gobel, Inc., through its subsidiary, Jacob E. Decker & Sons, Inc.; that said Adolf Gobel, Inc., makes no sales to chain stores in any substantial quantities.

6. That said concerns are all owned and controlled independently of each other, with the exception of Kraft-Phenix Cheese Corporation, which has, within the past few months, been acquired by National Dairy Products Corporation as a subsidiary. The two are listed separately for the reason that a full year has not been available for comparison of their combined sales.

7. That the concerns and facts regarding them referred to in Paragraphs 1 to 6 above, inclusive, are as follows:

Name and address	Lines handled	Percent of total sales to largest customer
Standard Brands, Inc., 559 Madison Avenue, New York, New York.	Yeast, malt, malt extract, baking powder, gelatine, etc.	4.
Beech-Nut Packing Co., Canajoharie, New York.	Conserves, fruit drops, mints, chewing gum, sliced bacon, etc.	2.6
[fol. 1211] General Foods Corporation, 250 Park Avenue, New York, New York.	Breakfast cereals and cereal drinks, jello, ice cream powders, sea food, coffee, syrup, cake flour, tapioca, gelatine, salt, meat products, baking powder, cocoanut, chocolate, cocoa, mayonnaise products, etc.	9.7
Adolf Gobel, Inc., 40th St. and 11th Ave., New York, New York.	Meat products and refreshments, etc.	....
Kraft-Phenix Cheese Corp., 400 Rush Street, Chicago, Illinois.	Butter, cheese, mayonnaise, and salad dressing, condensed and powdered milk products, malted milk candy, etc.	6.
National Dairy Products Corp., 120 Broadway, New York, New York.	Fresh milk and cream buttermilk, butter, cheese, eggs, ice cream, and beverages, etc.	.7
Campbell Soup Company, Camden, New Jersey.	Canned soup, etc.	17.
National Biscuit Company, 85 Ninth Avenue, New York, New York.	Crackers, biscuits, wafers, etc.	17.
Procter & Gamble Co., Cincinnati, Ohio.	Soap, candles, vegetable oils, glycerine, etc.	5.4
California Packing Corp., 101 California Street, San Francisco, Calif.	Canned fish, fruit, and vegetables, and dried fruits, etc.	18.2
Pillsbury Flour Mills, 301 Metropolitan Life Bldg., Minneapolis, Minnesota.	Flour, etc.	7.

8. That the total sales (domestic and export) for the year 1929 of the defendants Wilson and Company and subsidiaries were approximately $279,000,000, of which volume not more than 2% was sold to their largest single customer.

[fol. 1212] 9. That the total sales (domestic and export) for the year 1929 of the defendants Cudahy and Company and subsidiaries were approximately $268,000,000, of which volume not more than 1.9% was sold to their largest single customer.

10. That the total sales (domestic and export) for the year 1929 of all other meat packing concerns, except Swift and Armour, both slaughtering and non-slaughtering, reporting to the Department of Agriculture, under the Packers and Stock Yards Act, 1921, aggregated approximately $1,898,000,000, of which volume at least 3% was purchased by their respective largest single customers.

11. That in each case the figures representing the sales to largest single customers, on which the percentages hereinabove stated were based, represent purchases by such customers through centrally directed buying, as distinguished from purchases at option and discretion of local store managers.

12. It is expressly stipulated that the facts hereinabove set forth shall be received as evidence with the same force and effect as if put in evidence in this hearing by witnesses and documents as indicated herein, provided that the petitioning defendants do not hereby admit the materiality of said facts.

13. It is believed that the statements of facts herein are correct, but if error be found herein the parties hereto reserve the right to present evidence in correction thereof.

14. That the annual year books of Swift and Company, and the annual reports of Armour and Company, for the years 1920 to 1929, inclusive, may be offered by either party and received in evidence for the material therein contained as to the business and financial condition and policies of said companies.

[fol. 1213] SECOND STIPULATION

2536-42 In the matter of the amended petitions of the petitioning defendants herein for modification of the Consent Decree made and entered herein February 27, 1920, it is hereby stipulated and agreed by and between the United States, the interveners and the said petitioning defendants, by their respective counsel of record as follows:

(1) That the following named persons residing at the cities or places indicated and connected with the companies,

organizations and/or associations named in the capacity respectively indicated, are producers of food products as indicated by the names of the said organizations; that the said persons are available by subpœna to testify herein and that they would, if called to the witness stand and sworn, testify in substance; that as producers each of said witnesses is of the opinion that there is danger of a monopoly in the food industry if the Decree of February 27, 1920, in this case is modified as now prayed in this proceeding by the petitioning defendants Swift and Armour; that based upon their experience in their respective industries each of them is of the opinion that should said Decree be modified as prayed there is danger of such monopoly or domination on the part of said petitioners as would be injurious to all of the producers of food, to the distributors thereof and to the public; and based upon the same experience each of said persons is of the opinion that his industry would be injured and damaged if the pe- [fol. 1214] titioning defendants were permitted to manufacture, or pack or sell or in any way handle the commodities they are now prohibited from handling under the provisions of said Decree; the names of said witnesses being:

A. W. B. Kyosness, General Manager, Mountain States Honey Producers Association, Boise, Idaho.

W. Silver, President, Dundee Fruit Growers & Packers, Dundee, Oregon.

Frank Rauchfuss, Manager, Colorado Honey Producers Association, Denver, Colorado.

Julius Schuermann, Manager, Producers Grain Commission Co., St. Louis, Missouri.

Sam H. Green, Secretary, California Dairy Council, 216 Pine Street, San Francisco, California.

Carl Haberlact, Secretary, Tillamook Co. Creamery Association, Tillamook, Oregon.

William Garfitt, Secretary, Western Fruit Jobbers Association, Chicago, Illinois.

Harry Hartke, President, National Cooperative Milk Producers Association, Cincinnati, Ohio.

S. J. Cottington, Nat'l Association of Cooperative Grain Sales Agencies, Stanhope, Iowa.

Morton Tompkins, President, Grand Island Cooperative Canning Co., Dayton, Oregon.

(2) That the following named persons residing in the cities indicated and being connected with the companies or organizations respectively named are merchants, actually [fol. 1215] engaged in the wholesale grocery business in the states and regions contiguous to the cities of their respective residences; that the said persons are available by subpœna to testify herein and that they would, if called to the witness stand and sworn, testify, in substance, that in their opinion their business and their industry and that of their retail customers would be seriously endangered and injured if the petitioning defendants, Swift and Armour, were permitted to reenter and to engage in the manufacture or packing of or were permitted to sell or handle or use their distributive facilities in the handling of the grocery commodities now prohibited to them by the terms of the said Decree of February 27, 1920:

W. G. McConaughey, The Star Grocery Company, Parkersburg, W. Va.

Roy L. Davidson, M. O'Connor & Company, Indianapolis, Indiana.

Marco R. Newmark, M. A. Newmark & Company, Los Angeles, California.

George W. Fowler, Pacific Grocery Company, Everett, Washington.

C. P. Meredith, The Steele & Meredith Company, Springfield, Ohio.

J. T. Griffin, Griffin Grocery Company, Muskogee, Oklahoma.

H. C. Jewett, Jewett Brothers, Aberdeen, S. D.

George F. Ferguson, Downing-Taylor Company, Springfield, Mass.

George E. Lichty, Smith, Lichty & Hellman Company, Waterville, Iowa.

J. M. Radford, J. M. Radford Grocery Company, Abilene, Texas.

[fol. 1216] R. S. Hazen, Hazen, Trent & Harrell, Knoxville, Tenn.

T. Weir Labatt, The Collins Company, San Antonio, Texas.

J. H. Brown, The Hicks Company, Shreveport, La.

J. P. Cunningham, The Herrman Company, Paterson, N. J.

Allan J. Wash, Lange Grocery Company, Sparta, Wis.

C. L. Keaton, McKnight-Keaton Grocery Co., Cairo, Illinois.

(3) That the following named persons residing at the cities indicated and connected with the organizations shown being producers of livestock, including cattle, hogs, sheep and lambs, in the cities indicated by their residences and organizations are available by subpœna to testify herein and that they, if called to the witness stand and sworn, would testify in substance that based upon their experience in the livestock industry each of said witnesses is of the opinion that there is danger of monopoly and domination of said industry should the Consent Decree here involved be modified so as to permit the defendant packers to own or operate stockyards; that based upon the same experience each of said persons is of the opinion that his industry would be benefited if the large meat packing companies are continued to be restrained in their ownership and relation to stockyards and terminal railroads as they are now restrained under said Consent Decree. Said witnesses are:

S. H. Thompson, President, American Farm Bureau Federation, Chicago, Illinois.

[fol. 1217] W. I. Drummond, Chairman of the Board of Directors, American Farm Congress, Kansas City, Missouri.

Milo Reno, President, The Farmers Educational and Cooperative Union of America, Des Moines, Iowa;

and further that Mr. Reno, the witness above named, would, if called, also testify that in his opinion, if petitioning defendants were permitted to engage in the handling of grocery commodities, or in the retailing of meats or groceries, that would tend to monopoly and restraint of trade.

It is expressly stipulated that the matters hereinabove set forth shall be received as evidence adduced by the United States and said Interveners with the same force and effect as if put in evidence in this hearing by witnesses as indicated herein.

Provided that the concurrence of the United States and the interveners in this stipulation does not constitute and shall not be construed as an admission by any of them of the materiality of the kind of opinion testimony herein set out, or of other testimony amounting in substance thereto,

whether by stipulation or otherwise; but this stipulation is made for the Court's assistance in case it should consider such testimony material.

Provided, further, that nothing herein shall preclude the parties or any of them from calling any of the persons named herein as witnesses to testify to matters other than those herein stipulated.

Provided, further, that the right is hereby expressly reserved to the petitioning defendants, or any one of them, to produce testimony on the subject of this stipulation in explanation of, supplementary to, or controverting, any of the facts stated herein.

[fol. 1218] THIRD STIPULATION

In the matter of the amended petition for modification of the Consent Decree made and entered herein February 27, 1920, it is hereby stipulated and agreed by and between the United States, the Interveners, and the Petitioning Defendants, by their respective counsel of record, that in the trial of said cause it may be taken as proved that the table set forth below shows, as in the appropriate columns and for the respective years indicated:

1. Total sales of meat and meat products by the Kroger Grocery & Baking Company through its retail outlets for each of the years 1920 to 1929, both inclusive.

2. Cost of said meats and meat products so sold for each of said years 1920 to 1929.

3. The total sales value, at wholesale, of all meats and meat products manufactured by said Kroger Grocery & Baking Company, in slaughtering and meat packing establishments operated by it, for each of the years 1925 to 1929, both inclusive.

Year	Total Meat Sales	Cost of Meat Sold	Total Sales of Products of Meat Packing Establishments Operated
1920.....	$7,313,140	$6,065,968	.....
1921.....	8,434,707	6,735,616	.....
1922.....	10,483,146	8,256,710	.....
1923.....	14,280,605	11,299,985	.....
1924.....	17,269,543	13,377,012	.....
1925.....	21,206,192	16,631,447	$5,322,290
1926.....	25,150,859	19,853,580	6,332,617
1927.....	26,233,667	20,296,144	6,151,101
1928.....	36,086,631	28,194,630	9,955,291
1929.....	51,984,005	40,525,040	10,464,362

[fol. 1219] FOURTH STIPULATION

In the matter of the amended petitions for modification of the Consent Decree made and entered herein February 27, 1920, it is hereby stipulated and agreed by and between the United States, the Interveners, and the Petitioning Defendants, by their respective counsel of record,

1. That the production of lard compounds and substitutes by Swift and Company, Armour and Company, and Morris and Company, and their respective subsidiaries, the total production of said products for the United States, and the percentages of said Swift, Armour, and Morris production to said total production, for the years 1916 and 1927, are as shown in the following table:

	1916 (lbs.)	% of Total	1927 (lbs.)	% of Total
Swift & Co., et al.....	143,773,024	17%	249,924,700	20%
Armour & Co., et al.....	99,736,105	12%	*190,110,502	15%
Morris & Co., et al.....	44,164,386	5%	.....	.....
Total U. S.....	839,399,031	100%	1,239,087,169	100%

*Includes Morris & Co.

[fol. 1220] 2. That the production of oleomargarine by Swift and Company, Armour and Company, and Morris and Company, and their respective subsidiaries, and the total production of said product for the United States, together with the percentages of said Swift, Armour, and Morris production to said total production, for the years 1916 and 1927, are as shown in the following table:

	1916 (lbs.)	% of Total	1927 (lbs.)	% of Total
Swift & Co., et al.....	25,868,574	17%	47,458,200	16%
Armour & Co., et al.....	21,061,290	14%	*42,099,485	14%
Morris & Co., et al.....	11,846,959	7.7%	.....	.....
Total U. S.....	152,509,913	100%	294,066,722	100%

*Includes Morris & Co.

[fol. 1221] (85) Dr. FRANK W. MILLER, Assistant Chief, Packers & Stockyards Division, Bureau of Animal
2543 Industry, United States Department of Agriculture, Washington, D. C., testified in substance as follows:

2544 I have had prepared by the accounting section of our division, under my general supervision, certain statements with reference to the meatpacking business of the United States. These statements were compiled from the annual reports received from the various meatpacking

concerns included therein, and furnished to the government in accordance with the law, in the way I described when I previously testified in this case.* Government Exhibit 7 is such a statement, showing "Condensed statement of operations" for the meatpacking concerns reporting
2553 to us for the year 1929. In this statement the first column, headed "Big Four Federally Inspected", includes the business done by Swift, Armour, Wilson, and Cudahy and their respective subsidiaries; also the Morris business conducted by Armour.

The second column, headed "Other Federally Inspected Slaughterers", covers the business of all other establishments that operate under federal meat inspection and ship meat or meat food products in interstate commerce.

The third column, headed "Total Federally Inspected Slaughterers", represents a summation of the preceding two.

2554 The fourth column, headed "Non-federally Inspected Slaughterers", covers slaughtering establishments which purchase livestock on a public stockyard, as designated by the Secretary of Agriculture (which is [fol. 1222] sufficient to qualify them as packers within the Packers & Stockyards Act), but do not ship meat or meat food products in interstate commerce, and therefore, do not have Federal inspection.

The fifth column, headed "Miscellaneous, Including Non-slaughterers", comprises establishments engaged in the manufacture or processing of meat or meat food products, but who do not slaughter livestock—such as concerns manufacturing sausage, oleomargarine, cured and smoked meat products. It includes any concern defined as a packer in the Packers & Stockyards Act that does not slaughter, and comprises mostly concerns that ship products interstate under federal inspection, and a few concerns that buy livestock on public stockyards and have it slaughtered at a custom abattoir, instead of slaughtering it themselves. If they slaughter it themselves, they are not in this column; they are in one of the preceding columns of slaughterers, accordingly as they are federally or non-federally inspected.

2556 The last column contains the totals for all business represented in the preceding columns.

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* See pages —, supra.

This statement represents 832 distinct reporting concerns, and no concern is represented in more than one column except as it is included in the total column.

The numbers at the foot of the columns (4, 211, 215, etc.) represent the number of concerns in each particular classification whose business is covered in the respective column above.

2557 The same scheme is carried out in the lower table, "Number of Heads Slaughtered". Here it is possible that there are some duplications, in that non-slaughterers may report livestock which they have had custom [fol. 1223] slaughtered, and the same livestock might be duplicated in the report from the abattoir where slaughtered. But the total of custom slaughter is minor in amount, as shown by the footnote at the bottom of the statement; and such duplications are not sufficiently material to affect the general percentages.

2558 The column of figures at the end of the lower table shows the percentage of total slaughter by all packers, as shown in the next preceding column, that was handled by the Big Four (Armour, Swift, Cudahy, and Wilson), as shown in the first column of that table.

2559 The figures on the several lines of this statement, opposite the classifications indicated at the left, represent the totals of figures for those respective classifications reported to our division by all packers whose business is included in the respective columns. Thus, the $957,417,940.16 appearing at the head of the second column of figures represents the total net sales, domestic, as reported to us by all federally inspected slaughterers other than the Big Four.

The figures for "Cost of Sales", which are compiled in the same way, represent totals of expenses as so reported, and include the cost of the raw materials and usually, also, manufacturing, selling, and distributing costs, overhead, and various items of that kind, although the various packers do not all uniformly include the same items.

"Total Operating Expense", the second item below, includes cost of plant operations of various kinds that are not put in with cost of raw materials and distribution.

[fol. 1224] As to the items, "Other Income" and "Deductions from Income," all of the matters included under

these items cannot be identified by reference to
2569-70 the packer reports. Where it is possible to identify it, "Other Income" appears to include interest received on investments, and other items representing income other than that from operations of the business as such, and the deductions represent such items as taxes, interest paid on outstanding obligations, and deductions of that kind not directly attributable to operations. We provide a blank on our report forms for those items, and the figures here given are the totals of the figures reported by the packers in those respective classes on those forms.

2560 The figures for "Net Profit" at the bottom of the financial statement represent the total net profits of the respective concerns there included, as reported to us.

2561-63 Government Exhibits 8, 9, and 10 are similar statements for the years 1928, 1927, and 1926, respectively, with the same explanations applicable, the only difference being that in the classification of net sales there is a separate item in the 1929 statement called "Miscellaneous Operating Revenue" which was set up separately that year for the first time, and is in the earlier years probably included in the figures for domestic net sales.

2563 There is a slight variation in Exhibit 10, indicated by footnote (a) at the bottom, in that two of the Big Four changed their fiscal years, and, as to them, only eight and ten months' business, respectively, is included in this statement. The figures for the Big Four here tend to be slightly less, therefore, than they would be if the full year were uniformly included.

[fol. 1225] Government Exhibits 11 and 12 are similar statements for 1925 and 1924, except that a slightly
2564 different classification is used. The difference lies in the fact that as compared with the preceding tables the reports for these years do not segregate the groups as to slaughterers and non-slaughterers.

The fourth column, headed "Non-federally Inspected," includes only slaughtering plants not operating under federal meat inspection, and does not include mere processers selling their products in interstate commerce.

2565 Processers who are not slaughterers, but who are federally inspected, would be included in the preceding exhibits for the later years under column 2. Processers who are neither slaughterers nor federally inspected, do not come within our jurisdiction and therefore do not report to us. The same difference in classification applies to the "Statement of Number of Head Slaughtered" for 1925 (Exhibit 11). That is, both as to
2567 the financial statement and the statement of slaughter, there is an artificial classification in 1924 and 1925 between everything federally inspected on the one hand and everything non-federally inspected on the other hand, only no statement of slaughter is given for 1924 for the reason that figures with respect to slaughter were not required to be reported in that and previous years.

2566 On Exhibit 11 the percentages of Big Four slaughter to total slaughter are larger than in some of the later years, partly, at least, due to the fact that in those earlier years there were more concerns that did not report, or whose reports were not in complete form.

[fol. 1226] Government Exhibit 13 is a condensed statement of operations, 1929, for the Big Four packers,
2568 which includes Armour, Swift, Wilson, and Cudahy, and is a breakdown of the figures for the Big Four included in the financial statement for the same year in Exhibit 7; and the "Total" column on Exhibit 13 is identical with the column "Big Four Federally Inspected" on Exhibit 7.

2570-72 Exhibits 14 to 18, inclusive, are similar statements for the years 1928 back to 1924, inclusive.

2572 Government Exhibits 19 and 20 contain tables showing the percentage of net sales for the Big Four (Armour, Swift, Cudahy, and Wilson) to the total sales of Federally inspected slaughterers, those of total slaughterers, and those of all meat packing concerns reporting to our Division. The amount of net sales here used, in each case, excludes foreign sales from foreign slaughter, but are otherwise the same as the net sales figures for corresponding years and classes of packers, contained in the Government Exhibits 17 to 18, inclusive.

The only exception is for the year 1925 (Exhibit 20), in which the figures as furnished by the original reports have been re-cast under classifications to correspond to those

used for the subsequent years (that is: segregating slaughterers from non-slaughterers), as distinguished from the classification used in Exhibits 11 and 12 (segregating Federally from non-Federally inspected packers, whether slaughterers or not).

The column headed "Number of Concerns," from these two exhibits, shows the number of concerns in each classification whose total business is covered by the money figures set opposite them, respectively. For instance: in 1929 (Exhibit 19), there were 211 Federally inspected slaughtering concerns other than the Big Four, whose total net sales, domestic and export, were for that year $1,000,289,581.69.

The item, "Total Not Included" in the second line from [fol. 1227] the bottom of each of these tables covers concerns from whom reports were received, but which, due to their fiscal year not being on the calendar year basis, or the fact that their reports were received too late,
2576 or for other reasons, were not included, as to number and business represented, in the tabulations contained in Exhibits 7 to 11.

The net sales of this group for the year 1929 is
2577 computed from the sales reported. For the year 1928, it is estimated. For the three previous years, the reports were not complete enough to enable a fairly accurate estimate of this business, and it is
2579-80 not included. The absence of that amount in these years tends to make the percentage of the Big Four show larger than it would have been with the inclusion of that amount.

The number of concerns in this class, with the computed or estimated volume of business by them, is added in and included in "The Total Per Packers and Stockyards Division," shown at the bottom of the table for 1929 and 1928 (Exhibit 19).

These totals, we think, represent substantially all that are subject to the Act, but there are probably some
2577 that we do not know of, or as to whom we do not have sufficient information to classify them properly. For the years 1925, 1926, and 1927, the total number of concerns shown at the bottom, in each case do not include this class of concerns whose reports were
2592-94 not included, as shown in the line above, so that the total number of concerns reporting to us in

each of those years will be found by adding together the last two figures in those respective columns, which would be 782 for 1927, 810 for 1926, and 615 for 1925.

The number of packers from whom we have received reports has increased since 1924, due to our more extensive effort to ascertain all packers engaged in interstate commerce, and subject to our jurisdiction. I cannot say to what extent that increase is due to new packers actually coming into the field, or only to obtaining information which brought already established firms within our jurisdiction. Both were involved.

[fol. 1228] As to the percentage figures used in these tables: The figures 100% appears three times, for the reason that it represents three methods of computing
2578-79 the percentage of the Big Four.

In the first column of percentages in each table, the total sales of all Federally inspected slaughterers constitute the 100% base with respect to which the sales of the Big Four are compared, while in the second column the net sales of all slaughterers, and in the third of all meat packers, slaughterers and non-slaughterers, reporting to the Division, are used respectively as to 100% bases. In each column, the percentage figures above represent the percentages of the respective items opposite which they stand, to these respective 100% bases.

2580-86 Government Exhibits 21, 22, and 23 contain tables showing comparison in percentage, between the net sales and profits of the Big Four, and the total net sales and profits of all Federally inspected slaughterers reporting under the Packers and Stockyards Act, for the years 1924, to 1929, inclusive.

As shown by the footnotes, the net sales here used exclude foreign sales from foreign slaughter, but this business is not excluded from the computation of net profits.

2629 (NOTE.—To correct this discrepancy, and by arrangement between counsel and Court, the net sales here used were later re-computed to include foreign sales from foreign slaughter, where the same is included in the computation of net profits, and percentage figures were revised accordingly. The corrections were then pasted in their respective tables to which they pertain.)

2584 It appears from Government Exhibits 19 to 22 that in the year 1927, Swift, Armour, Wilson, and Cudahy combined had 69.76% of the total sales made by Federally inspected slaughterers, whereas they earned 103.27% of the total profits of Federally inspected slaughterers. This odd situation arises from the fact that of the packers reporting to us in the group other than Swift, Armour, Wilson, and Cudahy, there were net losses in the consolidated statement representing a minus of 3.27%. [fol. 1229]. Government Exhibit 24 is a statement showing purchases of livestock by 832 packers reporting under the Packers and Stockyards Act for the year 1929, segre-
2586 gated to show purchases by each of the Big Four, individually, and by all other packers together; and further segregated to show the number of head of each species, and whether purchased at public stockyards posted under the Packers and Stockyards Act, or from other sources; and a combination of the two, to show total purchases from all sources. It also contains computations showing the percentage of livestock purchased by each of the Big Four by species, as at posted stockyards, and
2587 as at places other than posted stockyards, and as from both sources consolidated.

Data here given is compiled from our annual reports, except as to that showing purchases of Swift and Wilson, segregated as to source of purchase. These were furnished by those concerns to the Bureau of Agricultural
2588 Economics, and by them to us.

Government Exhibits 25, 26, and 27 are similar
2588-89 statements for the years 1928, 1927, and 1926, similarly compiled and subject to the same explanations.

In Government Exhibit 9, showing condensed
2590 statement of operations for 1927, the red figure $515,716.20, appearing opposite net profits at the bottom of the second column of the financial statement, indicates a net loss in that amount on a consolidated profit and loss statement of 187 Federally inspected slaughterers, other than the Big Four; not that each of those concerns sustained a loss, but that was the net loss for the en-
2595 tire group. That figure represents the difference between the sum of all the losses, and the sum of all

the profits of packers in that class. About 70% of
2596 those losses were sustained by about six concerns, out of which 47% of the total was borne by two concerns.

[fol. 1230] During the year 1929, there were 832 packing concerns which reported under the Packers and Stockyards Act, and since the end of 1929, we have received re-
2597 ports from 166 additional concerns, making a total
2598 of 998 concerns now operating under the Packers and Stockyards Act.

In Government's Exhibits 7 to 27, Armour, Swift, Cudahy, and Wilson were grouped under the designation "Big Four," because the tables were made as requested by the Department of Justice. Each of these con-
2599 cerns rendered reports separately to the Packers and Stockyards Administration, and the figures under "Big Four" represent a consolidation of the figures in those four individual reports.

Government's Exhibit 7 shows that in 1929, the sales of Armour, Swift, Cudahy, and Wilson combined were $2,558,742,455, and that the net profits earned in that year by those companies combined was $27,945,776; whereas, the sales of the miscellaneous packers reported in the next to the last column of Exhibit 7 were $447,229,982 in 1929, and that the net profits earned on such sales were $25,835,501.

2600 The figures contained in Government's Exhibits 7 to 27 include only packers who either purchase livestock at a posted stockyard or buy in a state other than that in which their plant is located and sell the products wholly within the state, or packers who both buy livestock in interstate commerce and sell the meat and meat food products in interstate commerce. The figures contained in these exhibits do not include:

1. A non-slaughtering packer who buys livestock wholly within the same state at points other than posted stockyards, and sells wholly within the same state.

2. A slaughtering packer who buys carcasses which it processes and manufactures, but who sells wholly
2601 within the same state.

3. Purely wholesale meat dealers, or jobbers, doing no processing, manufacturing or slaughtering, who have no

ownership relation with a meat-packing concern, as defined in the Packers and Stockyards Act.

[fol. 1231] 4. Farm slaughterers.

2603-04 The tabulations contained in Government's Exhibits 7 to 27, inclusive, start with the year 1924, because prior to that time reports were not received in very great volume. The Packers Act became effective August 15th, 1921, and the Packers and Stockyards Administration had been in process of development in the meantime.

2605 Government's Exhibit 7 shows that in 1929 there were 44,299,263 hogs slaughtered under Federal inspection, whereas the records of the Meat Inspection Division of the Bureau of Animal Industry as set forth in Petitioners' Exhibit 7 show that during 1929 there
2606 were 48,455,000 hogs slaughtered under Federal inspection. I do not know that I have any explanation of that discrepancy. The figures contained in Government's Exhibit 7 are compilations of the exact figures reported to us in annual reports but we have made no attempt to go back and check the accuracy of the reports submitted. The reports of the Meat Inspection Division of the Bureau of Animal Industry are received daily and I am unable to explain the difference between those figures and the figures contained in Government's Exhibit 7.

2608 According to Government's Exhibit 8, there were 45,177,260 hogs slaughtered under Federal inspection in 1928, and according to the Bureau of Animal Industry figures on Petitioners' Exhibit 7, there were 49,795,000 hogs slaughtered under Federal inspection in 1928. I cannot offer any explanation of that. The figures shown on Government's Exhibit 8 are compilations prepared from statements contained in the reports submitted to us by the 193 packers in the Federally inspected group.

2607 There are a few additional animals that could be added to the Federally inspected slaughterers which are contained under that miscellaneous column, if you will refer to Government's Exhibit 7, but it does not eliminate that difference you speak of, but it adds something.

[fol. 1232] Referring to Government's Exhibit 10, it shows 9,302,087 cattle slaughtered under Federal inspection in 1926, whereas the records of the Meat Inspection Division of the Bureau of Animal Industry contained

in Petitioners' Exhibit 7 shows 10,180,000 cattle slaughtered under Federal inspection in 1926.

2620-21 Meat inspection was established in 1906 and there are daily meat inspection reports or records made. So far as Federal inspection is concerned, the daily meat inspection records give a more complete and accurate record. I should judge that they would be very accurate.

2614 There is also a discrepancy between the total purchases of cattle from all sources by all packers reporting under the Packers Act, shown on Government Exhibit 25, as 8,955,400, and the total number of cattle slaughtered by the same 680 packers, shown on Government Exhibit 8, as 9,729,073, for the same year.

2616 Government's Exhibit 25 shows that 680 concerns under the Packers and Stockyards Act purchased from all sources 45,804,323 hogs in 1928, whereas Government's Exhibit 8 shows that the same number of packers report having slaughtered during that year 48,879,990 hogs, or more than 3,000,000 more than were purchased according to Government's Exhibit 25. This discrepancy is accounted for in part by the fact that Exhibit 8

2631 includes livestock slaughtered on a custom basis for other packers, as shown by the footnote at the bottom. Other than this, the discrepancy can only be accounted for, as I see it, by failure to report fully with respect to the number of head purchased. I think, as between the two, the report is more complete and ac-

2615 curate with respect to the number slaughtered than the number purchased.

In Government's Exhibit 13, the other deductions from income, amounting to $10,933,074.59 shown for Armour & Company in 1929, were shown on Armour & Company's report for that year as interest paid. There is noth-

2608 ing to show for what purpose or to whom it was paid. In the accounting treatment given, what Armour paid for labor used in the business is included as an operating expense, but not what Armour paid for money [fol. 1233] used in the business during that year. The same treatment applies to their business in Exhibits 14 to 18.

2609 Referring to Government's Exhibit 22, showing

2612 that in 1927, 187 Federally inspected slaughterers sustained a loss of $515,716.20, 77 of these firms sus-

tained losses and the other 110 earned profit. Six of these 77 losing firms sustained 70% of the total losses and two concerns out of these six concerns sustained 47% of the total losses. Many of the 110 concerns made very substantial profits in 1927.

Some packers other than the big four made
2613 larger profits than Wilson and Cudahy, not only in percentage on their invested capital, but in dollars and cents.

2617-18 The increase in the number of packers reporting to the Packers and Stockyards Administration from 525 in 1924 to 514 in 1925; 580 in 1926; 611 in 1927; 680 in 1928, and 832 in 1929, represents a gradual building up of information regarding packers subject to the Packers and Stockyards Act. There are 998
2619 packers reporting to the administration at the present time, as compared to 525 in 1924, representing an increase of 474 concerns.

2622 I have no knowledge of the volume of livestock purchased wholly intrastate, the products of which
2623 are sold wholly intrastate. There are so many small and local concerns and there is the farm slaughterer, if they can be classified within that group, and a multiplicity of various factors entering into it, that I do not believe that I could give a fair estimate.

2626 In Armour & Company's report to the Packers and Stockyards Administration for 1929, it classified interest paid as Expense, but in preparing Government's Exhibits 13 to 18, we placed interest paid under Other Deductions. The net profit as given is exactly the same in either case, but it is a question of where the interest paid is classified. Wherever interest is paid on outstanding obligations, bonds, etc., and Federal taxes, they are classified in the Government's Exhibits as Other Deductions.

The typewritten sheet appearing in Government's
2628 Exhibit 28 showing Profit and Loss and Surplus [fol. 1234] Reconciliation, was submitted by Armour & Company. The pencil figures shown on page 4, P. S. 17, were set up in the office of the Packers and Stockyards Administration.

2635 (86) E. C. ANDREWS, Special Accountant, Bureau of Investigation, United States Department of Justice, Washington, D. C., testified in substance as follows:

By request of counsel for the Government, I have prepared certain statements regarding prices on livestock and on wholesale and retail cuts, by years from 1913 to 1927, and by months from 1928 to August, 1930, inclusive.

Government's Exhibit 29 is such a statement for lambs, dressed lamb (wholesale), and leg of lamb (retail). The column of "Prices" under lambs are average United States prices per hundredweight received from the producer, taken from bulletins published by the Department of Agriculture. The prices under dressed lamb are wholesale Chicago prices, and under leg of lamb, average retail prices for the United States, as respectively indi-

2638 cated.

The column headed "Increase or Decrease" indicates the amount of variation from year to year, or month to month, as the case may be, in the corresponding prices for the animal, or cut, under which listed; for instance: under lambs, the price for 1914 ($6.49) represented an increase of 46 cents over the price for the preceding year ($6.03). Where the change is a decrease, it is indicated by a minus sign before or after the figure in

2640 question.

Where possible, these columns indicating changes have been placed side by side to facilitate their comparison.

Where no minus signs are used in the "Increase or Decrease" column, the figure represents an increase.

[fol. 1235] The sign at the top of each column ($. ¢) indicates the denomination in which the figures below are given; that is, the prices for lambs are in dollars per hundredweight, while those for dressed lamb and leg of lamb are in cents per pound. The changes shown in the "Increase or Decrease" column are also in cents per pound, although the changes shown for lambs may, for convenience, be taken as dollars per hundredweight to correspond to the prices at the left, or in cents per pounds

2640 to reduce them for comparison to the same basis as increases or decreases shown in the price per pound of dressed lamb and leg of lamb.

Explanatory notes at the bottom of the table interpret the symbols used and list in detail the sources from which these statistics are gathered. These sources are official publications of the Department of Agriculture, as to live lambs, and the Bureau of Labor Statistics, Department of Labor, as to the wholesale and retail cuts.

Government Exhibit 30 is a statement similarly prepared and subject to the same explanations, showing prices for steers, steer carcasses, and for loins and #2 loins, wholesale, and for sirloin and round steak, retail, which respectively come from those wholesale cuts. The prices given for carcass of native steers are Chicago wholesale prices.

2641 The official sources of this information are also indicated by the footnotes, but to these should be added Department of Agriculture bulletin #1029, page 930, labelled "Separate from Yearbook, 1928" as an additional source for prices of good to choice steers.

2643 Government Exhibit 31 is a similar statement relating to live hogs and to wholesale and retail cuts from that animal, with the same explanations applicable, and with sources similarly shown in the footnotes.

[fol. 1236] In each case, both as to lambs, cattle, and hogs, we have used for this purpose a representative retail cut coming from the wholesale cut used; that is, a leg of lamb comes from dressed lamb; sirloin steak, retail, from loins, wholesale; round steak, retail, from #2 rounds, wholesale; pork chops, retail, from pork loins, wholesale; bacon, retail, from bacon strips, wholesale; and ham, retail, from cured hams, wholesale; but we have not attempted to list all the retail cuts that come from a particular wholesale cut. These statements we prepared for the cuts requested by Mr. Teegarden.

[fol. 1237] (87) Dr. Arthur W. Miller, Chief of the Packers and Stockyards Division, Bureau of Animal Industry, U. S. Department of Agriculture, testified in substance as follows:

2739

I have some general knowledge of facts of local slaughter which is not related to interstate commerce in a way to bring it within the jurisdiction of our Packers and Stock-

yards Division. My knowledge has been obtained in three or four different ways: first, by actual contact with the slaughtering business throughout the United States; second, through surveys that we have made in connection with the enforcement of the Packers and Stockyards Act to determine whether or not certain slaughtering plants were subject to the jurisdiction of the Act; third, through information that we have gained in the enforcement of the Federal Meat Inspection Act—that is a part of the Bureau of Animal Industry (of which I am Chief); fourth, through studies of statistics that the Census Bureau has received. The slaughter other than that shown in Government Exhibits 8 to 26, inclusive, is composed of two parts; first, those local slaughtering establishments at country points, slaughtering and selling locally; and, second, what we characterize as strictly farm slaughter. The latter, in total number of animals slaughtered, is, in my opinion, greater than the amount of animals that are slaughtered by these strictly intrastate local slaughtering establishments.

2737 It would be my estimate that the slaughter under the jurisdiction of the Packers and Stockyards Act represents on cattle, sheep, and calves somewhere from 85% to 95% of the total kill in the United States, exclusive of farm slaughter. On hogs, the percentage probably would be a little less, i. e., the strictly local slaughtering plants probably slaughter a larger percentage of hogs, compared to the total, exclusive of farm slaughter, than they do of cattle, sheep, and calves. The figures that

2738 we submitted on swine would not represent more than 80% of the total slaughter in the United States, exclusive of farm killed animals.

In the State of Iowa, 12,000,000 out of 14,000,000 hogs purchased in that state are marketed directly; but a great deal of that goes into packing plants in other states.

[fol. 1238] (88) JOHN A. HARTFORD, President, Great Atlantic and Pacific Tea Company, New York City, testified:

2739 I have been associated with the A. & P. Tea Company for about 38 years, in various positions. I have been President of the company for nine years. Practically my whole life has been devoted to that business. I have

never been associated with any other chain store organization. The A. & P. Tea Company was organized
2759-60 about 72 years ago. It expanded its business from tea and coffee to include other groceries about 1890 or 1891. We got into baking powder, and then into extracts. We gradually got into the grocery business, as people began to leave these specializing stores. We did not develop very fast until about the time of the war, when we got into these cash and carry stores. We first began our cash and carry stores about 1911 or 1912; and since 1912 there has been a continuous development of the extent of our business.

2740-42 At the request of the government and in response to a subpœna, I have prepared certain information with reference to the business of the A. & P. Tea Company. About 17% of the sales of A. & P. through its stores is made under A. & P. brand designations. My best judgment is that of this 17%, 15% or 20% is manufactured by ourselves. We do not manufacture any of the goods that we sell under other concerns' brands. A large part of the 15% or 20% to which I have referred is made up by our coffee. We do not manufacture it, but we package and roast it; so that, exclusive of our coffee, we manufacture about 10% of the goods that we sell in our stores, with our own brands on them.

2740 About 25% of our sales is made under brands of concerns other than A. & P. That leaves 58% of sales of unbranded goods.

2742 We started originally as a tea and coffee company exclusively, so that our large coffee business is a [fol. 1239] survival of our original business.

As to A. & P. sales in its meat department with reference to how much of its goods are sold under A. & P. brands, my judgment of that would be that it would be under 5%. As I recall now, they only brands that I know that we have in our meat departments would be our bacon, and the larger part of it goes under our own brand. All we do with that bacon is to buy it from the packers, and slice it in our own warehouses, package it, and ship it to the stores daily. Our manufacturing process, that is, is limited to slicing up the wholesale cuts and packaging.

2743 Of the total sales through our meat departments, about 16% is made under brands of concerns other

than A. & P. The balance, besides the 5% sold under our own brands and the 16% sold under the brands other
2744 than ours, is sold unbranded. We do not manufacture or process any of the meats that we sell under other concerns' brands.

Our company has made studies for the purpose of estimating the total meat sales at retail in the United States, through all retail outlets of any sort. A year ago I think the total was close to $5,000,000,000 at prices then prevailing. Our exact estimate was $4,900,000,000. Out of the total of close to $5,000,000,000, we would figure that about $3,800,000,000 of that is available to our company as prospective business.

There has been a decrease, I think, of at least 15% to 20% in meat prices; so that would have to be deducted from that figure.

In certain parts of the country we have not developed at all. Up until a few months ago, we were not on the Pacific Coast. The last figures, as I remember, were that we only covered about two-thirds of the population of the United States; so that part of the difference between the figures of $4,900,000,000 and $3,800,000,000 is a territorial difference. [fol. 1240] I think also that the $4,900,000,000 figure includes sales to restaurants, dining cars, etc., though I am not sure that those sales were deducted in the $3,800,000,000 estimate. I would not consider sales to restaurants, dining cars, etc., as available to our competition. We are not in those lines of business.

2746 We have about 15,000 stores located in 3,864 communities in the United States.

2747 As between perishable and non-perishable goods sold in the grocery store, the non-perishable type is best adapted to sell under brand designations. Anything that is sold in a package would be easier to brand than goods that are sold in bulk.

My judgment would be that fresh meats are not adapted to sell under brands.

2747-48 I am acquainted with the terms, "leaders" and "loss leaders," as referring to retail merchandising. I do not like that word "loss", Mr. Teegarden. We have a very strong rule in our company that any sales manager who prices goods under cost has got to look for another job. I wish you would take the word "loss" out

of that. We do have leaders, sir. It has been a practice in the grocery trade to have leaders, I guess, for many years. We do have leaders, and those leaders are selected by the different divisional sales managers.

Our business got so large that we had to decentralize it. We could not sit in New York City and tell them what price to charge for eggs, in Dallas, Texas; so we decentralized our business, our sales, our buying, and everything. A great many thought it was a radical move, but we had to do it in order to conduct the business, or undertake to control the sales in one place.

We set up six divisions with six general sales managers. Under those men in each community, which would be a group, say of 500 stores, we had a sales manager. Where the radius covering a division (in which there are about 2,500 stores) was small, say 25 to 50 miles, the sales policy would [fol. 1241] be in the control of the division sales manager. In other divisions, where there was a mileage of 1,500 or 1,600 miles, the sales policy would be controlled by the community sales manager.

2749 The community sales manager is in charge of 200 or 300 stores. It would be left to his discretion to decide what he would use for a leader. He might be governed by the general conditions of the market, his overstocks, competition in a certain way. He might use a standard brand of goods. If it was a heavily developed meat district, he might use meat. In another district, he might use butter—in another district, sugar. Thus, the entire policy of sales is left to the divisional presidents and their sales managers. We do not interfere with that at all, providing, as I say, they do not make too low a cut in those goods. There are a great many people who lean toward standard brands of goods in making their leaders, because they are known, and they can make a comparison.

2750 The designation of leaders is never left to the local store manager. An article designated for sale as a leader ordinarily will be so offered for a week; never longer than that; but in some cases, only two days.

2751 It is difficult to say whether, averaging the prices at which we sell a commodity as a leader in a particular district with the prices elsewhere where the same commodity is being sold on a regular basis—whether that

average would be a profit or non-profit price. We have not defined our business to such an extent that we can calculate profits on individual items. For example, we might sell cigarettes at a 5% gross profit and make money on them, while if we sold potatoes at a 10% gross profit, we might lose money. Cigarettes are easy to handle. Potatoes are bulky goods, hard to handle, and have to be weighed. We are going into the question very carefully, and I think in another six months we will have
2751-53 figures to show what our profits on individual items are.

Our buying is also decentralized, in a measure. Of [fol.1242] course, companies like General Foods have a certain price for their goods, and we pay as much for Maxwell House Coffee as the man who buys ten cases of it. There is really no buying of General Foods—it is placing orders. We have formed a company called the Atlantic Commission Company, with offices in all the large cities where we have stores. We place our orders in those particular places for all our green goods. There is a certain amount of local buying done in these units or these divisions. If there is a certain class of goods manufactured or produced in the Pittsburgh district, the Pittsburgh buyer of that division will buy the goods for Pittsburgh and all the stores in that division. We would not be tied in on that buying at headquarters. So, in a measure, we are decentralized; in a measure, we are not decentralized on the buying. All our coffee and tea, for instance, is bought at headquarters.

2752 Our meat buying is handled entirely by the divisions, without any directions. This meat business, of course, to us is a new business, and we have not got it refined. It is developed in some divisions to a greater extent than others. We never instruct from headquarters a district buyer of meats to withhold orders from a particular concern.

2753 In a large chain store concern such as A. & P., selling meats on the scale that we do, a steady and reliable supply of meat and meat products is essential and vital to the proper conduct of our meat business. Handling meats in the quantities we do, our organization can be serviced decidedly better in the supply of its meat products by large scale manufacturers than by small scale manu-

facturers, particularly where our business is intensively developed. In the eastern division, where the business is particularly intensively developed, we do not think it would be possible to supply these stores with the grade of
2754 meats that we want from the small independent packers. We could not supply our stores with the quality of meat, without the Big Four packers. I do not think the [fol. 1243] smaller ones are in a position to give us the service or the quality.

I think I am correct in stating that in the eastern division, about 90% of our entire meat business is bought from the Big Four. I am convinced that due to the very large sales of meats in that division, we are getting better quality. I really think it would cause our company tremendous embarrassment—I do not know what we would do—if we lost those channels. We can buy 20 carloads of meat from these companies, and we will get it in, and it is proper and right to go out.

2755 In some of the divisions where we have not developed a meat business and our markets are small and we do not buy in such quantities, I think our task is much easier; but the future of the meat business of our company is such that we have got to get out of the small markets. We cannot give the consumer the proper deal, the proper price, and the proper quality, with small turnovers. We have closed many meat markets and small grocery stores on account of large overhead. We must develop a larger turnover, and my judgment is that we cannot get the services from the small man. I think we made an estimate to the Federal Trade Commission once, and found that we were buying goods from 400 to 500 packers.

2756 The effect of the importance of large turnover to us is the closing of a lot of our small community stores. For example, if we had a $2,000 a week store and a $500 a week store, the overhead in the $500 store would be 2% or 3% higher. We would then have to price our goods 2% or 3% higher to get out even. So we decided to abandon the stores and develop the larger markets, because what is in our mind is to get these goods to the public at as little money as we possibly can. In our shift from the small to the larger store, the public has benefited from our decrease in overhead.

2757 Whether, if a large chain store organization should suddenly find itself cut off from the large packer as a [fol. 1244] source of supply, it would become desirable for the chain store organization to create sources of supply for itself, on which it could depend on a large scale, is a pretty distressing question to me. It is a pretty hard question to answer. If our company could not get any more meats from the packers, we would be confronted with a very serious situation. It seems to me we would have two alternatives—either to go out of the meat business, or into the packing business. Before going into the packing business, we would give that step very serious consideration. I think we have got worries enough trying to run these retail stores without trying to slaughter cattle.

2758 I think the fact that we can get the service and the quality from these large packers is a great incentive for the company to expand its meat business. We find that the public like to buy their foodstuffs under one roof. I think the automobile in a measure is responsible for that. They come in and they park, and they like to buy their meat, their green goods, and their groceries under the same roof. That is one of the reasons that got us into the meat business. Where we have bought from the Big Four, our meat business has gone ahead faster, and I believe that is due to the service and the quality of the meats.

2759 Now if we had to go to the independents for our supply of meats the result would be, in my judgment, that we would instantly force the prices up on ourselves. I cannot imagine a situation of that kind, to throw this business into the small packers, who are not equipped for it. I think we would force the prices up on ourselves. I cannot conceive of such a situation.

2761-62 (89) PETER VAN BEVEREN BOUTERSE, Treasurer and General Manager of McCann & Company, Pittsburgh, Pennsylvania, testified:

McCann & Company does a retail cash and carry food [fol. 1245] business. It sells both meats and groceries. As far as we can find out, it is the largest independent retail food business in the United States, under one roof. In our main store, we do a business of $5,000,000 a year. About

five weeks ago, we opened up a new store, which is going at the rate of $1,800,000 per year.

2762 It is really impossible to give the approximate number of meat items such as sausage, frankfurters, steak, etc., that we carry in our store, because we have a foreign department and carry everything from Prague Ham down to Ponhaus. I suppose there must be over a hundred items. These are handled in several departments, delicatessen, foreign foods, poultry, meat, and smoked meat. I am not the head of the meat department; so am not as familiar with this as I should be.

I should say that our meat sales approximate about 27% of our total sales. That does not include the foreign meats and the meat products handled in the delicatessen department; but foreign or imported meats form a very small proportion of the total meats we handle.

2768 We buy approximately 75% of our meats from the Big Four packers, principally Swift, Armour, and Wilson. Cudahy is not in our territory. Seventy-five per cent refers to our meat sales, exclusive of poultry.

2764 Included in the 72% to 75% of our non-meat business is a rather large restaurant and cafeteria, a soda fountain, luncheonette, and sandwich bar. From figures that we have been able to compile, the proportions in which our meat and grocery sales are divided are fairly representative of the proportions of such a business in normal or usual combination meat or grocery stores. We have compared our figures with figures of such stores as Pierce of Boston, and we are doing about an average job.

2765 We buy in large quantities from most of the large food integrators, such as General Foods, Standard [fol. 1246] Brands, National Dairy Products, Beech-Nut, and organizations of that sort that have combined in the integration or merging of different food commodities for sale or manufacture. The largest quantity we buy from any one of these concerns is not as large as the quantity we purchase from one of the leading packers, for the simple reason that there is no one person in the canned food industry, for example, that is as important in his field as the meat packer is in his same relative field. There is no one man making canned goods even with a nationally advertised brand that is as essential to our business, or to whom we

must go if we wish to maintain a certain standard of quality.

Sixty percent of our entire meat business is what is commonly known as premium beef and yearling. We do not sell any of the lower grade steer beef; so we have a different situation in foods, where we may carry anything in dry groceries from a dried pea of a very cheap quality to a very fine imported French canned pea. There is only one premium beef, and we can buy it from about four people, where we might buy any given item in any one of our other departments from many more sources than be can buy the premium beef.

2766 I am familiar with the general collection of food items which are sold by General Foods, Standard Brands, and similar companies. I cannot conceive of Standard Brands, for instance, in their effort to sell so many different things—how they could compare, or how our total purchases from General Foods, for instance, all the way from mayonnaise to almost anything can compare in size with our purchases of premium beef, practically one item. There is no one article that we sell that would make up the total volume at the end of the year, with the possible exception of coffee, which we process. We roast our own coffee, and pack it. That is the only single item that 2768 would exceed our premium beef department's total volume.

With reference to deliveries to us of non-meat lines from [fol. 1247] a particular company, compared with deliveries of meat lines from a packer—for example, deliveries from General Foods, as compared with deliveries from one of the Big Four—individual deliveries of the former are smaller in bulk than the latter. Meat is a very bulky thing. A meat delivery would be much heavier. Canned goods are generally drawn in from our warehouse. We keep a separate account, so that a comparison with meat deliveries is difficult, because if we get in a carload of a certain type of canned goods, we probably would not bring all of it into the store the first time.

2769 We use leaders in our retailing. A leader usually is continued for three days. We very rarely have leaders at the beginning of the week. Leaders may continue for a week—occasionally for two weeks if we run into a competitive fight the following week end. We never cut our prices after we inaugurate a price, but we may come

back the second week to meet competition. We never go below it. If a competitor undersells our special price, rather than withdraw our price and go back to the regular price, we meet the competitive price, but do not display it very prominently. In those cases, our leaders run over ten days. The primary purpose of leaders is to attract people to the store. We have 14 department managers. One department manager may be smart enough to stay away from leaders and keep his gross margin up and let the other fellow bring the crowd in. We have to watch them to see that any one department does not do all the playing of the brass band. It is difficult to estimate the largest number of leaders we would use in the store at one time. It is the timeliness of the item, rather than the number of items. We do not believe in a great number of items being advertised.

2770 We advertise very few items at a time, rarely over 12 or 15 items, even on a full page of advertising.

As to buying futures, that involves a bookkeeping [fol. 1248]. question. Some stores charge futures in and charge the department interest for money invested. Others charge them directly to stock the moment they enter the warehouse. I would say that as a policy we are trying to keep our stocks down and buy more often. There has been a general trend toward that in the retail business. It is called "hand-to-mouth" buying. The trend has also been toward reducing inventories for quicker turnover. The effect is very greatly to increase the importance of quick and prompt deliveries by the people from whom we buy.

2771 If the large packers upon whom we rely for our meat supplies should go into the retailing business themselves, in competition with us, I assure you the effect upon us would be quite disastrous. For instance, last Friday and Saturday, we advertised two carloads of Swift's Premium pork loins for Friday and Saturday selling. We advertise many meats by trade names. We advertise Armour's "Star," or Swift's "Premium," or Morris' "Supreme"; and when we sell meat products, contrary to Mr. Hartford's answer, we believe that the trade mark in meat is very important; and I assure you the packers must believe so, with the money they spend to advertise.

I am including fresh meats. I am sure our meat department has been built up by the fact that the public has been taught to know what the premium beef means. We could

not build up our meat business on yearling or cow beef or steer. We must designate whether it is Armour's Star or Swift's Premium beef in order to get the customer. The customer has been trained to know that name and she looks for the mark. For many years this type of merchandise was not marked, but now the outside of the beef, referring to fresh meats, is marked at intervals of about half-an-inch, with the name of the packer and his trade name.

2772 I do not believe I am competent to answer how it would affect us now if Swift and Armour should go into the retailing of these brands of meat in competition with us. Their methods of operation, and their policy [fol. 1249] toward their former customers, the merchandising plan behind it, their method of distribution, the type of service they would render, and so many things, would enter into an answer of that sort. Knowing what I know about the extra margin we make on the hams that we smoke, and the bacon that we manufacture, and the bologna and sausage, I would say that we could not compete with the packers in price. Also if there was no sense of duty on the part of the packer to furnish me first, I should presume that he would take care of his own customers first, and I might find it increasingly difficult to get my orders filled if my source of supply had suddenly become a distributor.

2773 We get our deliveries of meats from a local packing house branch in Pittsburgh. With respect to groceries, we have very many local branches and warehouses in Pittsburgh. A city of that size has a representative stock from practically every big food distributor, so that we receive practically everything—except butter, which we buy in Chicago, and eggs—by direct delivery from local branches. Butter and eggs come in carload lots in refrigerator cars, very rarely in less than carload lots.

2774 (90) WALTER KALLBREIER, a retail grocer of Louisville, Kentucky, trading under the name of Kallbreier Brothers, testified in substance as follows:

We handle groceries, meats, and vegetables, doing a total business of $125,000 a year. About 28% of our business is in the meat line. I have been in this business for nine years,

all the time with this concern. We buy our meats
2775 mostly from local packers, the majority from the Louisville Provision Company, and do not buy meat products at all from the larger packers. We find the service of the local packers adequate.

2775 In lieu of the further testimony of this witness, it was stipulated that such further testimony as the witness would give would be of the same substance and effect as that of Mr. Bouterse.

[fol. 1250] (91) DONALD SCHEELE, of the August Scheele Company, selling retail groceries and meats in Elgin, Illinois, testified:

2776 We do annually approximately $750,000 to $800,000 worth of business, within a radius of approximately 12 miles. We have two or three suburbs of Elgin that we take in—rather wealthy communities that we serve. Otherwise, our business is purely local. We deliver to these other communities by truck.

2777 About 18% of our business consists of meat sales. We depend upon Swift, Armour, and Cudahy for our meat supplies. We buy very little from the small packers. There is one local packer, from whom we buy nothing but a few articles in the smoked meat line. The small packers in our community we find are not equipped to deliver the quality or quantity on short notice. We buy two or three times a week. We have built up our meat department on a purely quality basis, premium steer beef—and it would be rather hard for us to find another source of supply in case this were taken away from us. By "premium
2779 steer beef," I do not refer to the brand of any particular packer, but refer merely to the best quality
2777 beef. We cater to a more select trade.

2778 I think it would be very disastrous if we should find the large packers from whom we buy retailing their own meats in competition with us. In fact, I have no idea where we could draw our source of supply from in our community. We are situated 36 miles from Chicago, and these big packers seem more or less to have monopolized the packing industry in that community, and con-
2779 sequently you will find very few small packers in the community. I do not know of any packers who do

business in the beef line with any of our competitors there, except Armour, Swift, Cudahy, and Wilson. There are a few small packers in pork, I think.

In lieu of the further testimony of this witness, it was stipulated that such further testimony as the witness would give would be of the same substance and effect as that of Mr. Bouterse.

[fol. 1251] (92) JOHN COODE, a retail grocer doing business as a corporation under the name of Crone &
2780 Jackson Company, in Nashville, Tennessee, testified:

My sales amount to $160,000 a year. I sell within a radius of eight miles around Nashville, delivering by truck.

2781 My meat business constitutes approximately 20% to 21% of my total business. My meat business consists of general meat lines, including smoked meats and fresh meats. For my supply of meat products I rely principally upon local packers who slaughter locally in our town. We buy some meats—not over 20% and probably not over 10% or 15%—from Armour and Swift. We cater to a better class of trade who like good foods and are able to pay. We do a credit business.

2782 It would affect my business very little if the packers from whom we buy our meat supply should retail their own meats in competition with me. For example, we handle Star bacon. I think Star bacon is a very fine brand; it is a popular brand, and well liked; but our volume of its sales would be just that much gone. It just depends on the retail price to the customer. Of course, if a competitor came in and cut that price, I would loose that much profit by meeting it, and if I did not meet it, I would have to lose; but it would be a very nominal part of my individual business.

If the packers should retail meats and groceries together, in competition with me, in my opinion, it would be a question of the survival of the fittest. If they were better merchants than I was, they would get by. It would be hard competition. I am not looking for it, not hoping for it.

2703 We meet a good deal of competition now. We compete with four chains, at least two of which are

good merchants. The Hill chain has 100 stores in Nashville; A. & P. about 10; Piggly Wiggly about 20; and Saunders eight or nine. There are about 150 chain stores in our town. I am not in direct competition with them, because [fol. 1252] I do a big service and credit business. Where people want the most for their money, they get it from them; and where they want the best for their money, they get it from me. I find that an efficient business doing a credit and delivery business, catering to that class of customer, can keep going, even in spite of the chain stores. I have been maintaining myself for 14 years, and if it does not get any worse than it is, I am going to be around a while longer, if I live.

2784 (93) OTTO P. KUGLER, a retail grocer doing business under his own name, in Milwaukee, Wisconsin, and part-time Secretary of the Wisconsin Retail Grocers' Association, testified:

I am a small community grocer doing a $40,000 a year business. I handle only groceries and no meats outside of bacon, which we slice ourselves. I am located in the outskirts of the city at 1150 27th Street.

2786 Invariably our merchants, from my contact with them, within a week or ten days, will drop or raise their retail prices on a different commodity, every time the wholesale price drops or rises, especially on perishables. Perishables change more in price than the canned goods do. The rapidity of turnover has something to do with it.

2787 It is good merchandising policy even for a small merchant to work for rapid turnover. He should, within a period of ten days, place even staple articles at a reduced price in order to dispose of his stock and get his turnover, and then get into the market to buy on the present prices.

There are factors which make it difficult for retail prices to rise and fall, precisely as wholesale articles do, on the same commodity. As an illustration—about two weeks ago, a chain outlet became a combination market. The gentlemen who operated that firm happened to be just two doors away from this independent market which operates

four stores. When the chain put in a meat department with [fol. 1253] their staple groceries, fruits, and vegetables, immediately this independent market slaughtered prices to way below cost, because of the necessity of meeting the chain competition.

2788 In another case a meat dealer, when a competing A. & P. store put in meats, decided to put a grocery department in his meat store. He engaged the services of a man at $40 a week and 1% of the sales; and the sales a week ago Saturday were $1,500. He dropped his prices on the grocery items. If that man is to make a profit, he will have to make up his margin on his meats. So far as his grocery sales alone are concerned, he could not survive the competition. We heard Mr. Hartford of the A. & P. Company testify that if an A. & P. unit had too large an overhead and it did not pay them, they withdrew that unit from their system. I surmise that it is the hope of the independent of whom I spoke to force that condition in this particular community. He is trusting to his ability to make it unprofitable for that particular chain store. If he does not succeed, he is just naturally out of luck. We buy some of our grocery lines from General Foods, Standard Brands, etc. We buy through a distributing jobber, who is a sort of commission agency for Standard Brands. The jobber makes some of the deliveries to us from goods that he has in stock; and Standard Brands itself delivers the rest, from a pubilc warehouse in which the merchan-

2791 dise is stored. Standard Brands uses its own trucks.

We are able to buy from the Beech Nut people direct, without going to a jobber. Some of the rest of the brands we are not able to buy direct as yet, except through a buying group.

2793 I am a member of a small voluntary chain consisting of 20 stores. We are not associated with any wholesale house. We meet once a week and club our orders. We get specialty men in the various commodities that we need, and try to get the very best prices that we can. I take care of that through the jobbing houses, or, if possible, get it direct. All of the 20 stores are located in Milwaukee. One-fourth of them are combination meat and [fol. 1254] grocery stores. We do not club orders on perishables, because of the nature of the product, which

does not make it desirable to handle them. It is difficult for any group, no matter whether it is a big organization or not, desirably to distribute perishables.

2799-2802 There are quite a number of groups or clubs out our way—about 69 or 70 in Wisconsin at the present time. These are all connected with the National Association of Retail Grocers. We are not exactly a voluntary chain. We do not adopt a name for all our stores, or anything like that. We do what the voluntary chains do in group buying, in order to get the benefit of larger buying power. We also get in our advertising service. The jobber or wholesale grocer enters the picture with reference to the store re-arrangement plan, which we call the Milwaukee Plan. He assists in the plan of making better and more attractive stores, both morally and financially. The retail member of the group does not receive financial help; but, for example, he is given the assistance of a man capable of intelligently re-arranging his store, according to the latest merchandising principles. We have never tried to give a man financial help to buy equipment.

2793-94 I have never been in the meat business. If the packers should go into retailing groceries and meats in the same stores, it is my opinion that it would mean the passing of the community grocery. The intense system of present day merchandising would not permit the expansion of the ordinary retail community grocery to meet that competition, which we could foresee that probably the packers would go into. The fact that they would operate combined meat and grocery stores would also put them in a better position. The trend is toward

2794-95 community merchandising under one roof. The question of finance also enters in. For two years I have been at the end of a store re-arrangement plan [fol. 1255] which would make the independent a better place to trade, by better merchandising methods; and bring the store into the style and shape in which the people would be able to merchandise the same as they are in some of the larger localities; but on account of finances and various other things, we find that we have a difficult time to bring this merchandising plan into being. This plan necessitates the buying of new equipment, such as show cases, modern refrigeration, etc.

2799 As a result of the cry of the public to be better served, there has been a rather intensive movement in recent years to revamp stores, making them cleaner, more sanitary, better lighted, more attractive to customers, and the arrangement of the lay-out inside the stores, so that it would be more convenient to the customers. To some extent, chain store competition brought this about; but the main desire of the merchant was to serve the public in a more efficient manner.

2795 The small grocery store is to some extent confronted with the question of finances, but not so much.

Where there is a keen little merchant, he is able to do it, and at the present day, he will go ahead and try to improve himself; but sometimes even that defeats his purpose, on account of competition. To finance the purchase of new equipment, the grocer sometimes borrows from his banker; sometimes the jobbing houses have helped him out.

2796 I compete with an independent store handling both meats and groceries. An advantage accrues to the independent by virtue of the fact that it handles both meats and groceries. Its grocery department has to some extent increased the meat business. If I also handle meat, it would give me a better leverage; but most of our retailers are holding back on the combination meat and grocery department, on account of impending quick-freezing developments which might force them to change their [fol. 1256] entire equipment in another year. It is just a matter of another year before we will see most of these retailers putting in a combination market. Quick-freezing would be used for fruits, vegetables, meats, and poultry.

2798 From my contact with the retail trade of the State of Wisconsin (and I have just been through the state to 15 local associations), I express the opinion that the feeling of the trade, with reference to the effect upon them, if a system of retailing should develop whereby the large packers would be retailing their own meats and groceries, including the use of the quick-freezing process, is that in the majority of cases the independents would be put out of the picture of food distribution. The use of quick-frozen food would require a new and different type

of equipment, and the independents would have some difficulty, from a financial standpoint.

2803 (94) ERNEST BUFFETT, a retail grocer trading under his own name, in Omaha, Nebraska, testified:

2813 I have been in business about 37 years. My busi-
2804 ness is located in the better residence district of the city. In 1929 I did a business of $240,000. About 23.5% of that consists of meat, including one and one-half per cent, which is of poultry.

2813 In 1928 my business was about $7,000 less. In 1926 my business was about the same as in 1929. In 1927 and 1928 it slipped; but in 1930 will be less than one per cent away from the 1929 figure, despite the depression. About ten years ago we did a business of
2821 about $128,000, making an increase of $60,000 in ten years. That increase has not been due to any extent to an increased price level of the things we sell. Our prices now I do not think are on any higher level than they were at the close of the war.

[fol. 1257] We have several sources of meat supply. We buy from Morrell & Company, pork packers; Decker,
2804 Cudahy, Swift, Armour, and two independent packers—Hoffman, and John Rath Packing Company, located in South Omaha. Our purchases from Cudahy and Swift are delivered by truck from local branch houses in Omaha. Armour has recently closed its Omaha branch, and delivers from its South Omaha branch, which is its packing plant. Cudahy and Swift also have packing plants in South Omaha; but all sales to us are made through the Omaha branches, which are four miles away.

2806 Twenty percent of all the meat we purchase comes from Swift, Cudahy, and Armour. Since Armour discontinued its branch house, our purchases from it have been practically nil, except for lard and hams. The reason we no longer buy from Armour is that our meat buyer finds it more convenient to stop at the branches of Swift and Cudahy in Omaha than to drive to South Omaha to visit the Armour plant.

2807 I belong to a cooperative group, which happens to be the first group which started cooperative advertis-

ing in this country.

2814 There are two other groups in Omaha—one known as the Handy Service Stores, with 20 or 25 members; and the other called the Tiptop stores, with about 25 members.

2807 Our group consists of 17 stores, all located in Omaha. We advertise in the two daily papers Tuesday evening and Wednesday morning, for specials that we offer for Wednesday and Thursday; and on Friday
2808 we advertise different specials for Saturday only. Some Wednesday specials may carry over until Saturday, but never over into the next week.

2807 We have not over 30 specials on the Wednesday list, and about ten on the Saturday list. These items are seasonable, merely descriptive wording, and the prices cut a trifle on all of them, and rather deep on two or three [fol. 1258] items. None of them is cut to a no-profit basis. That is not the policy of the organization. All the 17 stores are known as the "Buy-Rite Stores."

2808-09 Due to the fact that the different stores in our organization handle different grades of meat, we do not use leaders in our meat departments. In some districts they do not require the same grade of meat that we would, or the same grade of lamb; and we have had practically no success in offering meat specials, with the exception of such items as hams, strip bacon, or cured
2821-22 spare ribs. We do not concentrate buying of meats for the chain.

2809 We use leaders along the line with merchandising, as it is done to-day in any line of business. Every line of business adds a price on their merchandise when they mention it in the newspapers, not necessarily a deeply cut price; but the public, when they are told about an article, are interested in what the article will cost them. So it is not necessary to cut the price if you want to sell an item, but tell them about the item, and then give them the price at which it is being sold. In other words, if you describe the article without stating the price alongside, the consumer would not be interested in the article. The object of leaders is to draw trade, to attract buyers who are now buying goods elsewhere.

2810 The average consumer to-day wants to buy her food supplies under one roof. If she is attracted to

our store by our specials in the grocery department, and fruits and vegetables, she will, in all probability, buy her meats from us.

2811 It is quite necessary to-day to have both groceries and meats. We just would not be able to attract the trade with just groceries in our districts. We have to have meats, and our idea is to use the grocery specials to attract the trade, and then display our meats and price them in the store to attract the customer to that department, after he [fol. 1259] is in the store. We have practically no specials to offer in the meat department.

2812 If Swift and Armour should go into the retail business, retailing both groceries and meats, that would have a serious effect on our business. In my years of experience, we have had many forms of competition. However, their sources of supply have been from the wholesaler. The first competition that we had was from the department stores. They bought from the wholesaler. We had a great deal of radio selling in the west. Most of them came through a wholesaler. As to chain stores, they buy goods direct from the manufacturers, but they have an overhead expense in their warehouses of about six percent. Through collective buying the jobbers are willing to work with us on a six percent margin; so that we own our goods in our salesrooms at practically the same prices as the chain store owns its goods in its salesrooms.

If the packer should retail, he would take the position of manufacturer, jobber, and retailer in one. If he happened to single me out, and wanted the business in my community, I would not last very long. There are men in the world who are not above taking advantage of a situation, and cutting prices continually until they do get the business in that particular vicinity. It has been done and will be done again. I think it would be quite disastrous to a man who was buying his goods from a jobber to have to meet that kind of competition.

2815-20 If Armour and Swift wholesale groceries, along with meats, if they confined themselves to wholesaling, I do not know that it would affect our business. It would perhaps give us additional sources of supply, unless they eliminated the sources that we now have. In all probability, we would seek to find out whether or not we could [fol. 1260] buy from them in competition with others.

There is a possibility that they could bring about economies in distributing their present products, if they had the other lines added. However, I cannot help but feel it would be to the detriment of already established distributors. We all enjoy clean competition, and I am glad to have competition that works at a profit.

If Armour and Swift handled canned goods at wholesale, and absorbed part of their present overhead in handling these articles, with the distribution facilities that I know Armour and Swift and concerns of that kind have, I do not honestly believe that they could put the goods into our stores any cheaper than it is now being done by a wholesaler. We are now buying our goods on a margin of five percent over opening prices in California. These goods are brought into Omaha, that is, plus the freight. They are delivered to the different stores, billed on 30 days' billing. That service is performed for five percent, and it is performed very efficiently. The packers could not perform this service any cheaper or any more efficiently. If they handled the whole system from manufacturing through retailing, they could pick out certain districts and operate at a loss, while the profit is going on in the rest of the country. We have a case in Omaha at the present time where chain stores practiced local price cutting methods, singling out certain stores and endeavoring to undersell them. Our local association gathered the facts and presented them to the Attorney General. He told the chain stores that if they continued to single out a store and cut the prices below cost, he would absolutely withdraw their charter to do business in that state. So in a case where we found a chain store intensively competing with one small locality or one merchant, the matter was brought to the attention of our public authority. [fol. 1261] Going back to the question of overhead in the wholesale function, while the chain store performs the function that otherwise the wholesaler would perform, it
2819 costs money to do it. I understand that the average chain store has an executive and warehouse cost of six percent. Independent wholesalers in our district have an overhead cost of around nine percent or ten percent; but on collective purchases, quantity buying, etc., they will handle our business on a five percent basis. The last figure that we have as to the total number of independent grocery stores in the United States, exclusive of chain stores, and

small grocery stores of the hole-in-the wall variety, is 325,000.

2814 The chain stores in Omaha are the A. & P., with six stores; Piggly Wiggly Stores operated by Safeway; and O. P. Skaggs, with seven or eight stores. O. P. Skaggs is a brother of the Skaggs that owns Safeway. There is also a local chain called the "Hinky Dink," with about 30 stores. Tuckman Brothers operate five stores, but I would not classify them as a chain. It is always difficult to say when a chain is not a chain.

2815 I know that the A. & P. have their own coffee buying headquarters in South America, and buy there regularly. I did not know that the A. & P. canned salmon in large quantities in Alaska. I understand that they have connections in California for fruit.

2822 (95) JAY D. MILLER, Vice-President and General Counsel for Sprague-Warner & Company, Chicago, Illinois, testified:

Sprague-Warner & Company are importers, manufacturers, and distributors of food products. They do not retail, but wholesale and do some manufacturing.

2828 We handle substantially all lines of food products.

2822 We ship our goods to our customers to a large degree by railroad freight. We make truck deliveries in and [fol. 1262] about Chicago. We have distributing points from which goods are distributed in various parts of the country. I do not know how many we have. We deliver in all the states in the country. On the West Coast we have distributing points at Los Angeles and San Francisco. In making these distant deliveries, we are required to use less-than-carload freight, to a very large extent. The greater portion of our business is handled by less-than-carload freight. We, and not our customers, pay the freight, i. e., our shipments are prepaid. I am not intimately acquainted with the rate structure applicable to railroad shipments. That is in our freight department. I have nothing to do with that. I know that the cost of freight in less-than-carload shipments is an element of cost entering into the price at which the customer must sell his goods is very important.

It is also very important in our ability to sell the customer goods at an advantageous price.

2825 I have no knowledge as to actual freight costs on particular varieties of shipments. Our competitors are usually wholesalers and manufacturers. We handle meats only that are cured.

2826 If it should be possible for a competitor of ours to ship less-than-carload quantities of wholesale groceries in a way that resulted in no additional freight payment by him, or in a way that would cost him substantially less than the less-than-carload freight charges which we are compelled to pay on similar shipments, if long continued, that would be very disastrous and ultimately, I think, would seriously affect the jobbers of the United
2827 States in our line of business. The net profits of the business are so small. I cannot give you our net profit accurately, but it will run usually from two percent to two and one-half percent of the sales. I think that
2828 is fairly representative of the business.

Our competitors are many. We compete with local [fol. 1263] wholesale grocers, some of whom do business interstate. I do not know whether there are many concerns as large as Sprague-Warner & Company in our line.

2829 I do not know what the volume of our business was last year. That is in another department. I cannot tell you approximately how much we earned last year. I am general counsel for the company and have nothing to do with its financial affairs. I did testify on direct ex-
2830 amination that our company made about 2½ cents on each dollar of sales. I do not know what our invested capital is or the percentage earned on invested capi-
2831 tal. I do not know the amount of our company's dollar earnings last year or the year before, or what it has averaged in the last ten years.

[fol. 1264] (96) J. Frank Grimes, President, Independent Grocers' Alliance of America, Chicago, Illinois; and a partner of William W. Thompson & Company, Chi-
2903 cago, Illinois, public accountants, testified:

2943 The full title of the I. G. A. is the Independent Grocers' Alliance Distributing Company. That is a corporation.

2903 The I. G. A. is an alliance of wholesale grocers and
2936 retail grocers working together for their mutual interest. We had been experimenting with various plans, and out of that experience the I. G. A. was
2937 created in 1926. We operate in 37 states. We have quite a number of stores throughout New England, Vermont, a part of Massachusetts, Connecticut, and New York, small sections of Pennsylvania, part of Maryland, and quite extensively in West Virginia; also Ohio. We are not on the Pacific Coast. Except for Florida we are not in states like North Carolina, South Carolina, and Georgia. We have quite a number in the Middle West; they are pretty well scattered. There is no limit to the number of retailers we take in any given city or town. We have somewhere around 150 retailers in the city of Topeka.

2903 The I. G. A. embraces 49 individual wholesale
2937 houses with their branches, making a total of 87 wholesale establishments. Forty-nine wholesale houses are our peak. We have been growing. The volume of the wholesale business in the I. G. A. is about $100,000,000 annually.

The volume of business of our retailers when we had slightly over 8,000 stores, was about $526,000,000.

2903 We had 9,828 retail stores enrolled, with some 500 or 600 in process, of which about 1,600 have been cancelled during the process, leaving approximately 9,000 that are now identified as I. G. A. stores. That means these 9,000 stores have all been remodeled, painted up, new signs over their store, and have all received the new advertising program.

[fol. 1265] We have field engineers in the field that re-
2903 model all these stores and get them in proper condition for I. G. A. plans. When a retailer joins the I. G. A. organization, we send over store engineers
2930 from headquarters completely to remodel his store, repaint it, fix up his widows, and make it a model
2945 store. The retailer pays only for the carpenter work and the paint. He pays nothing for the plan-
2930 ning; the engineering work, and the supervision. We get the store ready, conduct the opening, and intro-

duce the store to the public, and start the store off in the neighborhood as a modern store. After that, we conduct nine or ten sales a year through headquarters. We furnish the interior placards and window displays. In our window display department at headquarters, we make a photograph of a model window and send copies to all the stores, so they can follow the plan and put in modern windows. We furnish mats for local newspaper advertising. We use about 356 newspapers across the country every week. We furnish the retailer with a little four-page miniature newspaper with his own name and individual address, and telephone number on each copy, that is mailed out every two weeks. We do national advertising. We have been on the radio, and now we are in McCalls, and a series of those magazines. We keep feeding the retailer with everything that can possibly be thought of that will make his store modern and keep him abreast of the times. We furnish I. G. A. labels. It is a rather extensive service, very complete; and we believe it will be of great value to the independent merchants. Our service has made the retailer very much more efficient in his competition with others. To illustrate that: The average figures that were revealed by such sources as the Harvard Bureau of Business Research would indicate that the average retail grocery would cost between 18% and 19% to operate. We have, through this process of modernizing, got the percentage down to slightly under 11. The independent retailers generally—more particularly those who have introduced these modern methods—are becoming more effective
2933 in their competiton with retail chain stores. They [fol. 1266] are stopping handling such a great variety of brands, which lowered their overhead, and they can concentrate on merchandising. They are dis-
2932 playing their merchandise much more effectively. They are having a better volume with greater ease in handling.

2944 For revenues, in the first place, we maintain buying offices; and the total cost of operating those buying departments is prorated over the wholesalers, based upon their total volume of business. We get enough money in to operate and pay the cost of that buying department. The wholesaler pays for the service that the field men render when they install these stores and fix

them up. The retailer, when he joins, pays for all the service that I have described, $3.50 a week to the wholesaler. That amounts to $182 a year. Each wholesaler pays to headquarters $10 a year for each retail member; that is our office revenue. Out of the remainder of the $182 a year that the wholesaler obtains from each retailer, $108 goes to the advertising; that takes care of $118. That leaves $64.00 per retailer, which the wholesaler must use for newspaper advertising. The benefit the wholesaler gets is having fairly sure purchases from the I. G. A. members in his territory.

2904 We have 2,000 or 2,500 stores that do not receive the entire complete advertising. These people, for some reason or other, did not pay their bills, and their advertising, which includes posters, window displays, newspaper advertising, etc., has been cancelled for that reason.

2905 In addition to advertising material furnished to local stores, we do national advertising, which is paid for by the headquarters organization.

I spent 11 years in the wholesale grocery business, from 1889 to 1902 with Corbin, May & Company, of Chicago; and from 1906 to 1913, with Tolerton & Warfield
2928 Company, of Sioux City, Iowa. From the time I left the wholesale grocery business in 1913, I engaged in the work of installing systems in wholesale [fol. 1267] houses, and cost accounting systems in food producing plants. In 1917 I became a partner of William A. Thompson and Company. We put these systems and budget systems in all over the country, in many houses. We operated in the food industry very extensively—in some of the bigger houses from one end of the country to the other. Then about four and one-half years ago, we inaugurated the I. G. A. We found in our business that sales were dropping off in these wholesale houses. We tried to overcome this declining sales volume by reason of lowering costs.

By going carefully into the elimination of waste and a careful coordination of orders and shipping, and those things, we have stopped the advancing cost, and in the I. G. A. we are reducing costs materially.

2905 In addition to furnishing advertising to its member stores, the I. G. A. has buying offices for the pur-

pose of doing collective buying. We do collective buying for our wholesale houses.

Between 50% and 60% of our member stores are combination stores, selling meats as well as groceries. A good percentage also are general stores that handle dry goods and general lines, sort of small department stores. Our stores are mostly found outside of the big cities—not so much in the big cities as in the rural sections and smaller cities. We have some stores that will do $250,000 a year business. There are very few of those.

2906 In buying collectively for our retail stores, we buy dry groceries, i. e., canned goods, coffees, teas, etc. We buy canned meats and occasionally some smoked meats, such as ham and bacon. We do no collective buying of fresh meats at all. We do not buy all the requirements of our member stores in the canned and smoked meat line. That line is probably not a quarter of one per cent of the volume of the whole meat line. It is very small.

2945 In our central buying, we handle some cheese. We do not handle any butter or poultry, or things like that, through headquarters.

[fol. 1268] To do collective buying, we have a headquarters buying office in Chicago; another in New York, New 2907 Orleans, San Francisco, and in the pea fields of Wisconsin. We make arrangements in these offices. Manufacturers come in with their propositions, and we get the arrangements and then report them out to the wholesalers. From then on, the orders are placed partly direct and partly through our office; but they are shipped and billed from the manufacturer directly to the wholesaler. We do not handle any of the billing at all.

2929-30 All the retailers associated with our group are independently owned; the same is true of the wholesale houses. The headquarters of the I. G. A. owns no stock in any of the wholesale houses or any retailer, and vice versa. There is no financial connection in any way.

Our members are under no obligation to buy col- 2908 lectively through our organization. As our plan functions, the wholesalers do the buying at headquarters. We meet in Chicago about every six weeks and bring up the matter of buying. The retailer, in turn, is under a contract with the wholesaler to buy a minimum of $500 per month in all the lines of groceries that the whole-

saler handles. Our collective buying operation does not go farther than that. It is merely a recommendation of buying sources. Sometimes the wholesalers may send into us to buy carloads of this or that, and we will scour the market to find prices and locate the sources of supply, and then relay that information back to them after we have made the arrangements, and they place their orders direct.

2911 Thus the cooperation is entirely voluntary between the wholesaler and headquarters and is also voluntary between the retailer and wholesaler beyond the $500 a month requirement.

We have many cases where we will make an arrangement with the manufacturer for supplies, and the wholesaler will [fol. 1269] tell us, "I can buy cheaper," and he has that privilege; he is not obligated at all.

2909 Our headquarters buying offices buy somewhere between 35% and 40% of the total purchases of groceries of the wholesalers, though we do not buy anything direct for the retailers through headquarters. That is all done through the wholesale houses.

Approximately 25% of the total business of our retailers collectively is bought from the respective wholesale houses to which they are attached.

The dry grocery part of a retail store, depending on whether it is a general store or handles meats or not, will range from 25% to a third of its volume. The rest is in meats, bread, and those allied lines; and fruits and vegetables, and many of the general lines, such as dry goods, which quite a number of them carry.

2910 Of a complete food store handling meats, fruits, vegetables, and groceries, the meat business will constitute about 25% to 30% of the total volume.

We make no attempt to buy fresh meats centrally; we do not touch that in any way at all. The requirements of the people and the demands of the people in various sections of the country are different, and we have found out that it is practically impossible for us to do any centralized buying in any one spot, because of these varying conditions across the country. In the South they will use a different type of meat than in the East, and there are a variety of conditions which have made it practically impossible for us to buy centrally.

2911 The perishability of the product and the importance of quick turnover and quick buying is another important factor. Because of the perishability, it would be al-
[fol. 1270] most impossible to buy centrally, and then ship it out all over the country. The stores buy from day to day, and it would be almost impossible to do that from a headquarters organization.

2941 It is true that so far as collective buying is concerned, the purpose of the I. G. A. is to give the independent retailer whatever advantage mass buying brings. As we have stated elsewhere, "The I. G. A. draws the wholesaler and retailer together to produce a buying power that will get the same advantage, if there is any, in buying, that any single large group will get." The plan is to bring to the merchants the power that is possessed by large corporate retail organizations, such as a regular chain store corporation. We are trying to bring to the heretofore unorganized wholesalers and retailers the efficiency and economies and the power that organization on a mass scale gives.

2932 But the power the voluntary chains have is not as effective as that of the centrally owned chains. That is probably the biggest problem in the voluntary chain—to secure the cooperation in buying of the retail and wholesale members. It is quite difficult to get them to do the things that they ought to do. That is probably the biggest problem that we have at this time. The retailer is influenced by a great many salesmen who call on him, and he will buy a lot here and a lot there. Even the wholesaler to-day is called upon by representatives of manufacturers, and it is very difficult to get him to concentrate his buying.

2942 Outside of the centralized buying, our wholesalers designate to the retailers in their respective trade areas the sources from which to obtain such articles as are not bought centrally. For example, packers are designated to buy meats from, in some cases. Because of the perish-
ability of the product, central buying is not as adaptable to
[fol. 1271] fresh meats; so that in some of the trade areas, the wholesaler designates to the I. G. A. retailers certain concerns having perishables. It might be vegetables; it might be meats. They might take bread baking. They will come to the wholesale house and say, "I would like to make bread for this group, because I do not have to go to

any selling expense, and they will take the bread regularly"; and the wholesaler will say, "All right; we will buy your bread." We may make an arrangement with a lot of wholesale fruit and vegetable houses to distribute fruit and vegetables to those retailers. It is quite a saving to the bread man or to the fresh fruit and vegetable man if, instead of having this selling expense of going around to 150 people in Topeka, he can have the designation of the wholesaler. The I. G. A. headquarters gets no advantage from such designation. The local I. G. A. wholesaler may derive an advantage in some cases where the people designated will contribute toward the local advertising. In some sections they are able to do that.

2912 Leaders and specials are selected in each wholesale area to fit in with that particular locality and season. That is all done locally. Some one person in the wholesale house gets this advertising. We use 12 items a week. He makes up the list, and that is sent into the advertising company that prepares the material. Thus the selection is made by the respective wholesalers for the retail stores.

2939-41 The local wholesaler fixes the prices that are used in the advertising. How prices are fixed depends largely on the conditions in the territory, and whether we make a buy or a favorable purchase that can be utilized, and the season of the year. In the Topeka area, for example, when Thursday advertising appears with Friday or Saturday prices, those prices are the prices at which those items should be sold by the 150 members in the I. G. A. area; but the retailers do not follow those prices; that is the only thing. They can do it if they want to, and do not [fol. 1272] have to if they do not want to. It is true that that advertising tells the public that if you go into any I. G. A. store in Topeka, that is the price that you are going to get on that particular item; and we always hope that most of the retailers will get that price; but some retailers will not. We have no agreement whatsoever on that subject. It is just a voluntary grouping together. The wholesaler will agree that this is an item which the retailer can sell in competition for nine cents and leave a profit to the wholesaler; so that, so far as the public is concerned, it is the advertised price; and so far as the retailer is concerned, it is the

price which the I. G. A. wholesaler in that territory suggests that that article be sold for.

2951-2 The prices that are fixed by the wholesaler are, in the majority of cases, regular shelf prices. In many cases, they are used to meet competition—for example, the chain store competition in their respective markets.

2912 Each wholesaler operates in a well defined area. He serves the I. G. A. stores in that area only. He may sell outside the area to any but I. G. A. stores, and he may sell to other than I. G. A. stores within the area. The retail member stores may buy of anyone else besides the wholesaler also.

2930 When a wholesaler joins the I. G. A., we describe his territory by counties within a certain radius; and we say that as far as the I. G. A. stores and brands are concerned, he cannot sell outside of that area; but on everything else that is not branded, he has the privilege of selling it. There are no restrictions whatever. He can go wherever he wants and sell it. We own only the I. G. A. brand and the I. G. A. idea.

2913 Leaders continue from two days to a week—occasionally two weeks, that would be the limit.

[fol. 1273] Leaders are chosen mostly from the non-perishable lines; and they are branded, as distinguished from non-branded, articles. Fresh meats are not

2914 used as leaders to a great extent. We find that the retail stores reflect very promptly the fluctuations in the wholesale or primary market.

There are other factors besides the wholesale prices that enter into the determination of the retail prices, from the wholesaler's standpoint. Prices are published, for instance, on sugar; and the retailer and the wholesaler are forced to come down to these published prices. Coffee has been declining for a year. We have had to meet every decline immediately when it goes into effect. In most cases, the price to the consumer is reduced before the stocks in the hands of the retailer and wholesaler at the higher prices are exhausted; and in the markets where prices are declining, wholesalers at inventory times take very heavy losses to mark their goods down to below-cost, for the reason that a competitor might be out of the goods at the high

price and be buying at the low price. He lowers his price and forces everybody else into that price. Variation in consumer demand or taste substantially affects the question. Such things as the reducing habit, or a vegetarian campaign, or "Eat more of this," or "Eat more of that," have a substantial effect on consumer demands from time to time. We have cases where they advertised oranges when everybody was told to eat oranges at breakfast. You immediately saw a falling off in the sale of prunes. That follows through in the sales of items that have special sales advantage.

2915 Just as soon as many of those items become well known and well advertised, the effect is to steadily lower the price that the retailer can get from the consumer. That also affects the wholesale price.

[fol. 1274] In the I. G. A., we take all of those items and largely use those specials, like a well known and highly advertised food product; and the wholesaler sells to the retailer at his actual cost plus not to exceed three percent down below his cost of doing business, because those are items that are used as leaders, and they have been used so long as leaders that their shelf price has been steadily reduced until the margin is very narrow.

2916 In summing up, the forces influencing prices travel both ways—from the production end down through the stream to the retail end; and to some extent from the retail end up toward the production end. When items are used in retail stores as leaders, it forces the price down; it reacts back to the wholesaler, and he is forced to sell to the retailer cheaper, in order that the retailer can get some profit out of the item. In some cases, this reaches back to the manufacturers. In many nationally well known items that we use as leaders, it does not seem to affect the manufacturers' prices very much; the narrowing is in the difference between the wholesaler and retailer.

When the market declines generally in the raw product, that follows down quite rapidly to the retail store with continuing intensity. It is one of the reasons why the retailer and the wholesaler have difficulties. They take those declines so rapidly, even though they own stocks at the higher prices.

2917-20 We have given a great deal of study and thought to the quick-freezing process. We believe

it is going to be the only method of distribution as fast as they perfect the methods of refrigeration. We believe it will displace entirely the old methods. Meat cutters will be done away with completely. For one thing, it is going to make practically every retail food shop handle a complete line of food products. We feel that quick-freezing is going to spread itself into the fruit and vegetable lines. Food [fol. 1275] products will largely be packaged, even down to meats. Meats and vegetables will be branded, and stores will do away with butchers and meat cutters.

We think this meat development is going to be more rapid in the near future, and we are holding off any arrangement on meat, even down to the equipment of stores with refrigeration, because a new process will probably displace all of the refrigeration that the houses have. We are holding off and advising our stores or cooperating with them in putting in new meat departments with new refrigeration equipment, because of this new development.

2949 When quick freezing is developed, the central buying function can then operate with respect to vegetables, fruits, fish, and meats.

2918 We do not know to what extent this new refrig-
2949-51 eration equipment is covered by patent rights. We know of the Birdseye Quick-Freezing Process, and that that process is now controlled by General Foods. We have also seen some of Swift & Company's process. We know that they have been making experiments, and they have done a good deal of work along that line. We have seen no one else's. We understand the process is patentable. We understand the Birdseye method is a patentable process. While we buy from General Foods, we have done no business with them yet in the quick-frozen food line. We have no plans and have not studied it enough as yet to know what to do.

2918 Most of the new quick-freezing equipment is in the experimental stage, at the present time. Assuming that the quick-freezing process is developed satisfactorily and capable of successful operation, if those patented processes were controlled by a few, with the frozen meat process of such gigantic proportions, it would place the meat business completely in the control of those who [fol. 1276] own those patents. Because of the certainty of the development and what it is going to mean, it would

force every retail store to put in this process, and if it was controlled, it would give control of this whole situation that would be tremendously far reaching in this country. We believe that it would entirely take away the freedom of action of independent merchants. Those who control the patents would have absolute control of the distribution of meats. It would be impossible to compete with that process, under the old methods. The meat product put out under the new method is, in our opinion, going to be as good as, or superior to, the meat product now put out under the old method. The big factor in it is the doing away with the buying of carcasses and cutting them up—the elimination of the meat cutter and the great probability of being able to sell those meats in little packages branded just like one would sell a can of corn.

Control of quick-freezing patents would not seriously affect stores dealing in combination food lines, i. e., in lines that are not appropriate to the use of this process, like dry groceries, provided the source of supply of the other products, fruits, vegetables, and dry groceries, were free and open. If the food manufacturers got control of this process, besides manufacturing goods under the process, and also manufactured or distributed other food lines, and either sold those lines through their own retail stores or offered them to other retail stores, or both, the effect of their engaging in both the frozen and non-frozen lines would place the retailing of food products in this country absolutely in the hands of those who control those patents. It is not inconceivable to believe that if these processes of handling meat were controlled by the same parties who handled groceries, they may say to the retailer: "If you do not handle our groceries, you cannot handle our meat products; if you do not handle these lines, you cannot be an agent for our frozen meat process." It constitutes in our minds—and in our headquarters, we have talked this over for months—one of the greatest dangers in the dis- [fol. 1277] tribution of meats by these independent retailers in this country, who make up the biggest number and the biggest volume, and have invested the greatest amount of capital.

It would not even be necessary to make an actual threat of withdrawal of supplies. The distributing grocers would know very will that they would have to patronize these

houses for their grocery lines and other lines in order to keep in good favor in the meat department.

2921 We have for years been specializing in our auditing and accounting business in the wholesale grocery and food industry, and we have made up many of the statistical figures for the grocery business at large, statements have been published and statistical information furnished on the business. There are at present in the country approximately 6,000 wholesale grocery houses. From our knowledge the average sales per wholesale grocery house would run about $800,000 a year and the investment in the houses will average somewhere between 25 and 30% of their sales. We estimate that in the 6,000 wholesale houses there is an invested capital, meaning capital and surplus, of somewhere between one billion two hundred fifty million dollars and one billion five hundred million dollars. There are at present 375,000 or 380,000

2946 independent retail grocers in this country, including members of voluntary chains, but excluding independent retail meat dealers and regular chain stores. Probably a little less than 50% or 60% of those independent grocers handle meats. That is the percentage of our group that handles meats. But the combination store percentage is a little higher probably than we would find it on the average. But the tendency is toward the combination store.

2921 The average retail store will have invested a net worth of somewhere around $4,000. It might be a little higher than that. We figure about $1,500,000,000 invested in the independent retail grocery stores.

2922 Our investigation showed that in the wholesale grocery business, the number of people employed ranged somewhere between 30 and 35 per million of sales, depending on country or metropolitan house. That means that the average wholesale grocery business employs 20 to [fol. 1278] 25 people, and that 125,000 to 150,000 people work in the wholesale grocery business. That includes everybody engaged in the business.

2923 We find that an average of a fraction over four people are employed in a retail grocery store. There are about 1,500,000 people employed in the independent retail grocery stores. Our figures do not include exclusively meat markets.

Freight cost is in some cases quite a factor entering into the retail grocer's operations. Where there are long pulls, it brings about a higher cost. A wholesale house will deliver free of charge within a radius varying from five to 30 miles. When it gets into the country 60, 70, or 200 miles, the freight is paid by the retailer, and that adds to the cost. A radius of 40 miles, I believe, is the extreme limit over which the ordinary wholesale house can make shipments to retail customers profitably. I am referring to truck deliveries. In the case of rail deliveries, it all depends on how near the competition point is to the retail point at which it is being delivered. For instance, the I. G. A. has a distributing point at Topeka. We have retail grocers 250 to 300 miles away. The stuff is all shipped out of Topeka by rail, which is quite an item. Coming back east, where we run in to Kansas City and other points, we stopped shipping there because of that freight situation.

2924 I am not competent to testify about rates generally, but I know that in the Topeka case the rate from Topeka to points in western Kansas is an average of about a dollar per hundred pounds. Canned tomatoes No. 2 will weigh about 42 pounds per case. That would be forty-two cents a case freight, or twenty-one cents a dozen. What those tomatoes would sell for to the retailer would depend on the market, where they came from, the kind of tomatoes, etc.—probably from $1.00 to $1.15 per dozen, or about $2.30 a case, the freight cost on which would be 42 cents.

[fol. 1279] Our wholesale houses sell to their retail customers mostly in less than carload quantities.

2925-26 Very few retailers can afford to buy a carload. We have a number of retailers who would buy a carload of flour and similar bulky goods. A number of retailers in a district may combine to purchase a car, in order to save that freight. The amount of carlot shipments in our organization, however, is infinitesimal.

2926-27 If we should find a manufacturer of another food line going into the business of handling these wholesale groceries under conditions where it would be possible for him to ship a substantial quantity of his goods without paying freight in addition to that which he was compelled to pay on his other business, i. e., the same type of goods that we have to ship on our L. C. L. business, that

would place us at a most distinct disadvantage. If any competing organization had advantages that would give it lower total costs to get the goods from the manufacturer to the wholesale houses and from there out, it would be disastrous. The margin is so narrow as it is now that any little advantage is a big thing. For instance, in the case that I gave where the freight would cost 42 cents on a sales value of $2.00 to $2.30, if a competitor could ship, say 2,000 pounds of that sort of goods alongside of commodities which he handled in the preexisting business in another line, without sustaining any increased freight charge by reason thereof, it would be very bad, if it did it for them and not for us. It would be impossible for the Topeka house to ship those kinds of goods out to the retailers. The advantage would be too great on the other side.

2928 The total cost of operation for the wholesale grocery in the larger cities like Chicago or New York ranges from 11% to 14% of total sales, varying among different houses, different areas, and different conditions. If they have to deliver through traffic that is congested, it makes that cost higher; and if they extend beyond a certain radius, it will be higher. Costs are lower in agricultural [fol. 1280] or rural sections, where they range from six and one-half percent to eleven percent, averaging about nine percent.

2934 I am firmly of the opinion that if the packers engaged in the handling of grocery lines such as we are discussing, the effect would be to shift the business from the independents, so-called, over to the packers; that the business that they secured must necessarily be taken away from some other source, and would tend to raise costs generally over the country; and it is not inconceivable that if the packers engaged in the grocery business and in the retail business, many of the independent merchants who handle meats might become frightened and seek to buy meats from the packers, which would immediately raise their costs considerably. The entry into the grocery field of a new chain line, a wholesale line, a retail line, would have a tendency to raise the cost all over this country. Intensive selling does not increase the consumption of foods. The actual consumption of food per capita is lower. People eat less. The consumption of food has not risen proportionately with the increase in population. All,

particularly, the ladies, are trying to remain slender, and that is having an effect on the consumption of food. Concentrated selling and advertising of one food item would merely have the effect of displacing the sales of others. If I eat oranges for breakfast, I cannot eat grapefruit or prunes.

2935 So far as the effect of the slimness of the pocket book is concerned, it is a strange thing that when people are out of work, they seem to eat more. They stop doing everything else and concentrate on foods. We find the sales of candy, cigarettes, and tobacco rising.

2952 [fol. 1281] (97) CARL BRUNER, General Manager of Leonard Brothers, Fort Worth, Texas, testified:

2955 I have been general manager of Leonard Brothers since January, 1928. I was in the wholesale business from 1922 to 1928 as credit manager of a wholesale grocery house at Fort Worth. I went from those people to Leonard Brothers.

2953 Leonard Brothers is a retail department store. We also operate the Fort Worth Wholesale Grocery and the Fort Worth Wholesale Produce Company. The retail store sells both meats and groceries. Our retail volume is now going at the rate of $4,000,000 a year. Our wholesale volume will be around $1,600,000 this year. We started as a retail house. Our wholesale customers are in the same territory where we do our retail business. Our retail business was started in 1918; and our wholesale business, about March, 1926. The wholesale business is ancillary to the retail business. Our wholesale business is largely restricted to a radius of 75 miles from Fort Worth. We operate a cash and carry wholesale grocery. We do drop shipments from the manufacturer, sometimes as far as 150 miles; that is, we have the merchandise drop-shipped direct from the manufacturer to the retailer. The invoice comes through us, and we bill the merchandise. That is a very small

2956 item in our business.

2953 We ourselves do not deliver at all. The customers call in their own trucks.

2955 Our retail store handles a large line of other articles besides groceries and meats. Our meat, gro-

cery, and produce business will run around $1,800,000 annually, retail. By "produce," I mean poultry, eggs, butter, and cheese. They are a very small factor in our total volume—probably $40,000 or $50,000 a year. Of our $1,800,000 meat and grocery volume, approximately $500,000 consists of meat lines—a little less than one-third.

[fol. 1282] Most of our meat is bought right in Fort Worth from Armour, Swift, Fort Worth Packing Company (a Swift subsidiary), and there are some small packers
2956 there from whom we buy special items. We buy some merchandise out of Dallas.

2957 In our grocery lines we purchase from General Foods, Standard Brands, and other such large food manufacturing and distributing concerns. Our purchases from General Foods, I believe, are now being billed directly from them. If we took the portion of our grocery business for which General Foods competes, i. e., the collection of those items of food in which General Foods has competing articles to sell, that portion of our business would be slightly smaller, I expect than our meat business. Our purchases from General Foods are larger than from any other of the food integrators.

2958 We use leaders to some extent, but not on a big scale. We are using about eight leaders now. We run leaders for a long time. We follow the policy of putting the price down and keeping it down. We do not, as a rule, jump on commodity with a real low price, and then jump off it in the next couple of days. By "real low price," I mean right around our cost. We like to get out with enough margin to handle the product, but we do not always do that. The object of these leaders is to attract the crowds to our store. What we lose on leaders we have to make up on our other business. We use leaders quite often in the meat line, but not as often as in groceries. I cannot offer a real reason for differentiating between meat and grocery lines, but we have formed the habit of merchandising this way, I presume.

2960 A big store in our section of the country can use these leaders more effectively than can a small store. It is a peculiar twist of crowd psychology. They seem to have more confidence in the advertising of a big store than of a small one, unless the small operator is clever enough to pick items like Imperial Sugar, or some brand of sugar

where there cannot be any chance that he is running an inferior article.

[fol. 1283] If a grocery and meat organization could afford to reduce the price of the whole grocery line in order to attract the public to buy the meat line, or the

2961 other way around, I would say that it would be decidedly advantageous to them. I mean if they were in a position to make money out of their meat lines and could afford to carry their grocery lines for merely the cost of carrying those lines, that would be a decided advantage to them. The size and operations might have some effect upon their cost; and if the marketing concern was doing such a business in a great many localities in the different parts of the country, and a great volume of business in the aggregate, I think it would make it more possible for them to carry on such a business, for the reason that their size would carry a certain prestige with the buying public, and they could make up losses on other lines, etc.

2962 As I have said, we buy our meats from local packing houses. Our groceries come to our retail stocks from our own wholesale house. Our wholesale house buys them mostly in carload shipments.

2963 I judge about 70% of our meats comes from Armour, Swift, and the Swift subsidiary, Fort Worth Packing Company. We are dependent on the large packers for supplies of meats, especially of fresh meats in the quantities which we use. The small packers are not able to supply us in proper quantities. If the large packers' source of supply should be withdrawn from us, as, for instance, if they should decide to retail them through their own retail outlets, it would make it very hard for us. I would have to find some other way to fill the gap, and I do not know just how we would do it right now. Of course, I could buy from other concerns, but it is an impracticable thing to do.

2964 (98) J. W. Herscher, President of the Hubbard Grocery Company, a corporation engaged in the wholesale grocery business in Charleston, West Virginia, testified:

I have been in the wholesale grocery business for 34 [fol. 1284] years, and with the Hubbard Company since

October, 1922. Sales of the Hubbard Company amount to $2,500,000 a year. The radius of our operations is 75 miles. We maintain a truck service only for city delivery. Otherwise, all our goods are sold f. o. b. our building, and either called for by truck and shipped by rail or public truck, in which event freight charges are added. We sell mighty little in carload lots.

2967 A hundred cases of No. 2 Standard tomatoes would sell for $180. If we had to ship that to a customer 50 miles away, I think the average public freight on that class of merchandise is about 35 cents a hundred pounds. A case of No. 2 tomatoes weighs 36 pounds gross. One hundred cases would be 3,600 pounds. At 35 cents per hundred, the freight on 100 cases would be $12.60. With the cost of the tomatoes being $180, there would be a ratio of exactly seven percent to the value of the goods.

2970 On the L. C. L. freight shipments on which freight charges have to be paid, if a competitor could make such shipments without any corresponding charge, it would affect our business very materially. I would not have any chance to make the sale at any price, unless I were willing to absorb the cost of transportation. If a competitor could eliminate the cost of transportation, it would be enough to wipe out the margin of profit in at least a considerable number of cases. The functions performed by our house as a wholesale grocery may be explained as follows: First, in order to establish ourselves in business, we need capital, and a sufficient line of credit with our banking channels. We need a building of adequate size and location for the proper storage of the general line of commodities in which we deal, which in our line is approximately 3,000 different items. We must have some idea as to what the local trade needs. Some items—the imported items—come from all [fol. 1285] parts of the world, and are bought through New York. We must buy in carload quantities in order to obtain the merchandise at a decent figure and to get the benefit of the best freight rates. We have to buy goods that are needed from season to season, and pass them out in such quantities as they are needed to the retail grocers, hotels, and restaurants.

We must send salesmen out to interview the trade and offer them seasonal merchandise. We extend a reasonable and even an unreasonable line of credit, and in every way

act as a banker to the retail grocery trade. Frequently, we function as a banker to our sources of supply in our contracts with canners and others in the spring of the year, for our fall requirements. If we over-buy, we sustain the loss.

2973 We have approximately 1,500 customers. In a year's time, we buy continuously from possibly 500 first hand suppliers, manufacturers, canners, and such.

Our gross profit is about ten percent. Our net profit last year was 1.58% on sales. That is also a fair average for the last five years.

Reductions in price by suppliers are reflected almost instantly in the wholesale prices to our customers. With manufacturers announcing their prices to the consuming public over the radio, it is almost necessary the next morning to find bottom. Our competitors and other wholesalers, I think, do the same thing.

2974 Competition in our market is quite keen. There are two other wholesale grocery houses and two or three wholesale vegetable and fruit houses in our territory. Armour and Swift compete in our territory.

[fol. 1286] (99) V. P. WILKINSON, Associated with Wilkinson-Gaddis & Company, a corporation engaged in the wholesale grocery business in Newark, New Jersey-

2974 testified:

I have been in the wholesale grocery business since 1901. The Wilkinson-Gaddis Company was incorporated in 1886. It first went into the retail business in 1917, when it organized as a subsidiary the Mutual Grocery Company, a corporation doing a retail chain store grocery business.

The Mutual Company now has 300 stores, of which

2986 one-third sell both meats and groceries. In the hundred stores which sell meats, the approximate proportion which the meat sales in those stores bears to the total sales is pretty close to 40%, which sounds pretty high. The reason is that the American Food Company, a chain which we purchased, was particularly strong in meats and groceries. They were primarily a meat house; so that our volume of meats would be above the average.

2984 We acquired the American Food Stores about a year and a half ago. My recollection is that in 1921, we had about a hundred retail stores. I do not think we had any meat markets in our stores at that time. We did not have any meat department until we purchased the American Food Company.

2977 Prior to organizing our retail business, our wholesale volume in 1916 was from $6,000,000 to $8,000,000. Our retail business today is in the neighborhood of $15,000,000 a year.

2985 Since the time we entered into the retail business, our volume has gone up from $6,000,000 to $15,000,000 due to the expansion of chain stores. By keeping the Wilkinson-Gaddis Company a wholesale organization, we are able to buy directly for our chain stores from manufacturers, food integrators, and companies of that
2977 kind.

We have very little wholesale business left, other [fol. 1287] than the division which caters only to hotels, clubs, and restaurants. Our wholesale business now is done practically entirely with our own retail organization. Our entry into the retail business greatly decreased our wholesale business, due, I think, to the mental attitude of the independents toward a wholesaler who goes into the chain business. I have observed that it creates an antagonism. We took the strongest measures we thought possible to retail the old line independent trade. At
2979 the time of opening our retail stores we did not contemplate abandoning the old wholesale trade to other retailers.

2985 We entered into the retail business because we found that in our territory the so-called "old line independents" were decreasing in number; and at that time to some degree, and since then to a greater degree, the old line retail trade did not then exist for us. Studying the conditions as they were changing, we adjusted our business to meet the new way of doing business.

2979 I am acquainted with the retail, as well as the wholesale, end of the grocery business, but not much acquainted with the meat line.

2980 If we bring goods from the Pacific Coast through the Panama Canal to New York by water, and from New York to Newark, freight on No. 10 goods figures 62

cents a dozen, approximately 62 cents a hundredweight. Averaging an illustrative commodity as around $6.00 a dozen, which is about the grade of peaches, one of the most important No. 10 goods, the freight represents practically ten per cent of the entire cost. The water rate is considerably cheaper than we could get by rail over land. The rail rate is about 92 cents to 95 cents per hundredweight—about 50% more.

2981 About 70% or 75% of our groceries are shipped by rail from the source of manufacture to us. Prac- [fol. 1288] tically all our canned peas, which are a very heavy commodity come from Wisconsin, about 1,000 miles, at an average freight rate of 65 cents per hundredweight. Taking an average item, such as an extra standard pea, a hundredweight would be worth, when it reaches us, about $6.00 in purchase value; so that here again the freight ratio would run around ten per cent. If a competitor of ours were able to add shipments of the same sort to a pre-existing business without a corresponding increase in freight rate, I think it is quite obvious that it would put us out of the business on that particular item, because the freight amounts to more than the average net profits.

2982 If, on a substantial portion of goods shipped in competition with us, our competitor could ship such goods without a corresponding addition to his freight charges, it would be very, very much of a handicap to us.

2983 If our competitor's freight burden on the line of goods which he shipped in competition with our grocery lines should be cut 20% to 25%, that would seriously affect our ability to compete in those lines, but I do not think it would run to any such figure or anywhere near 25%.

3005 (100) S. M. Flickinger, Associated with the S. M. Flickinger Company, a corporation engaged in the wholesale and retail grocery business, in Buffalo, New York, testified:

I have been in the wholesale business since 1902. We entered the retail business in 1917 during the war. The approximate size of our wholesale business just prior to entering the retail business was between $4,000,000 and

$5,000,000 a year. Our wholesale business today, exclusive of sales through our own retail outlets, is about $5,000,000 or $6,000,000 a year. The increase is due to the fact that [fol. 1289] we had three jobbing units at the time we entered the chain store business, and now we have seven in different cities. They are located at Rochester, Syracuse, Elmira, Jamestown, N. Y., Erie, Pa., and Columbus, Ohio.

3008 We have about 380 retail stores located in western New York, western Pennsylvania, and a very few in Ohio. We have retail stores located in the same localities where we have our jobbing units. The volume of our retail store business is about $10,000,000 a year, I should say.

We were persuaded to go into the retail business, because the retailer was being driven from the field by the chain store. We felt that if we were going to continue our wholesale business, we would have to start our own chain stores in order to supply these wholesale houses with business. Our wholesale business with other retailers was not seriously affected when we went into the retail business. We did not lose many customers. Our loss of retail business of the independent stores was simply from their quitting the field, largely. We lost a few customers because we entered into competition with them.

3009 I am President of the Red and White Corporation, a voluntary chain organization. About 30 wholesalers with probably 60 or 70 branch houses are affiliated with me in that organization. I should judge there are 8,000 or 10,000 retailers, including stores in Canada, in the Red and White Corporation. Five or six thousand are located in the United States. The Red and White Corporation went into the organizing of retail outlets about 1921 or 1922. It operates altogether differently than do the I. G. A. stores.

3010-11 Red and White specializes in its own brands. The Red and White Corporation is a brokerage house. It is a corporation and owns the trade marks. Each affiliated wholesaler owns a certain amount of stock, thus furnishing enough capital to carry the labels and run the office. Headquarters arranges with different packers for [fol. 1290] packing the merchandise under these trade marks and quotes the merchandise to the wholesaler, who is at liberty to buy as much or as little as he cares to.

Then there is a contractual arrangement between the wholesaler and retailer whereby he is licensed to use these trade marks in his trade. He is given a sign carrying the Red and White trade mark. Wholesalers' representatives call on him and advise him as to how to take care of his store. They help him to arrange his store and set it up according to general store standards. Stores are painted red and white.

In most of the jobbing units, they have a little, inner organization, an executive committee, which looks after advertising and the buying of the merchandise other than what the jobber carries.

They do the group advertising for all the retailers in a certain city.

3012 We extend pretty well over the United States. We are on the Pacific Coast, in Seattle, Tacoma, and Portland. We operate in about 15 states, guessing roughly.

The brand that we use is characterized by the words "Red and White." That brand is used on a variety of articles.

The Red and White plan, briefly, is to coordinate, make more efficient the activities of the wholesale and retail members, and to help the retailers get those advantages which come from large buying power and group advertising. In other words, we are trying to do the job just as well as the chain store itself.

3013 No meat supplies except canned meats are purchased by concentrated buying through the Red and White Organization. I think it is pretty hard to do cooperative buying in products like fresh meats. There is one unit in Minneapolis that has tried it to some extent. I think they have some arrangement with Hormel Packing Company. They are the only ones that I know of that have [fol. 1291] tried it at all. What their results are I do not know.

Our member stores are under contract to purchase all their supplies from the jobber, in the jobber's line. That excludes meat lines. If they thought it was necessary to carry articles under a different trademark than that carried regularly by the jobber, they would probably hold a conference; and if they thought best, the jobber would stock those items under the other trademark. In fact, they carry most of the trademarks, anyway; so that it is not a

question of being confined to a jobber's own private trade-marks at all. The lines the jobber does not carry the retailer is free to purchase wherever he wishes. Such lines usually are fresh fruits and vegetables, butter, eggs, poultry, milk, cakes, and crackers, fresh meats, and perishable products generally.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would give would be similar in nature and substance to that of Mr. V. P. Wilkinson.

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(101) Roy L. Davidson, Vice-President of M. O'Connor & Company, a corporation engaged in the wholesale grocery business, in Indianapolis, Indiana, testified:

I have been in the wholesale grocery business 25 years, all that time with the same concern. We are more a specializing jobber; we are not carrying all lines. Our total sales are in the neighborhood of $2,000,000.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would give would be similar in nature and substance to that of Mr. J. W. Herscher.

[fol. 1292] (102) William J. Mandell, Vice-President and General Manager of Berdan & Company, a cor-
3019 poration engaged in the wholesale grocery, coffee roasting, and general merchandise business in Toledo, Ohio, testified:

We purchase our coffee from importers in New York. We roast the coffee and then handle it along with our other wholesale lines.

I was with the Berdan Company from 1902 to
3020 1904. From 1904 to 1907 I was in the tea and coffee business in New York. From 1907 to the present time I have been with the Berdan Company. The approximate annual volume of the Berdan Company is about $6,000,000, distributed within 100 miles of Toledo. About 60% of our business is done by truck, the remainder by rail. Ninety per cent of that done by rail is done in less than carload lots.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would give would be similar in nature and substance to that of Mr. J. W. Herscher.

3021 (103) H. A. RAMSDEL, Associated with the Ramsdel Company, a corporation operating a retail grocery store in Cleveland, Ohio, testified:

We operate a single retail grocery store handling no fresh meats, but smoked meats and delicatessen. Our annual business is approximately $235,000. We purchase our groceries principally from general grocery jobbers, and some from the large food integrators, such as General Foods, Standard Brands, and Beech Nut. We buy from them directly. Our purchases from General Foods usually come from General Foods' warehouse in Cleveland, where they have a concentration warehouse.

[fol. 1293] I think the combination meat and grocery stores have a great advantage over a store doing
3023 simply a grocery business. The only reason we handle no meats is that we are tied up with a lease which prohibits us from doing so.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would give would be similar in nature and substance to that of Mr. Bouterse and Mr. Carl Bruner.

3024 (104) J. T. GRIFFIN, President of the Griffin Grocery Company, Muskogee, Oklahoma; and President of Griffin, Goodner Grocery Company, Tulsa, Oklahoma, corporations engaged in the wholesale grocery business, testified:

We do exclusively a wholesale business. The
3026 Griffin Grocery Company operates 12 branch houses,
3025 and the Griffin, Goodner operates one house. The combined business of the two companies is about $7,500,000 a year. The Griffin Grocery Company manufactures peanut butter, preserves, jellies, and
3028 candies, and roasts coffee. Our manufacturing business is not over $600,000 or $700,000 a year, con-

stituting a very small portion of our total business.

3025 I have been in the grocery line for 22 years on my own account, and was employed five years before that.

3026 My products are distributed over eastern and northern Oklahoma, northwestern Arkansas, southwestern Missouri, and southeastern Kansas, and we ship a little coffee into Texas. About 95% of our groceries are delivered to our retailers in trucks from our distrib-

3027 uting houses, either our trucks, the other fellow's trucks, or public truck lines. Our truck deliveries have come on gradually with better roads. I would say that ten years ago there were very few truck deliveries.

[fol. 1294] We ship our manufactured products to greater distances. Those go by rail in LCL lots. Nearly all of our incoming shipments purchased

3026 by us move by rail. We are more of a private label house today than we were in 1920. For example in 1920 our business in canned milk was altogether in the nationally advertised brands.

3028-30 Now we sell considerable canned milk that we buy from independent manufacturers under our own brands. Our business on our own brands is somewhat bigger than it was in 1920. We get our private label milk about twenty cents cheaper than we get our Pet and Carnation milk, for example. I might add that we have difficulty in competing with Armour and Morris at points outside of our jobbing plants. That would be true also where our volume of the milk business is not sufficient to handle in carlots. We are obliged to use LCL shipments. For instance, Carnation and Pet milk costs about $3.75. Our own Polar Bear brand costs us about $3.53. We can sell that wherever we can ship in carload lots. But at points where we do not have distributing houses, we are at a distinct disadvantage as compared with the meat packers whose canned milk goes into that territory in refrigerator cars. They ship it in together with their meat, and they have a minimum, say, of 10,000 pounds. If they have only 7,000 pounds of meat, they can throw in the milk, I understand, and it costs them no freight on the milk. That is, the meat carries the load. So that at a point where we pay 35 cents a hundred freight or truck weight; some of that milk weighs about 56 pounds a case; so that the meat

packer would have an advantage of 20 cents a case over us. The meat packer undersells us, and has taken away our business entirely from us, because we could not meet the price and lose the 20 cents.

3028 In lieu of the further testimony of this witness, it was stipulated that any further testimony this witness would give would be similar in nature and substance to that of Mr. J. W. Herscher, on the wholesale grocery end, and similar to that of Mr. Moore on the manufacturing end.

[fol. 1295] (105) JAMES MOORE, President of the Snyder Packing Corporation, engaged in the canning of fresh fruits and vegetables, and the manufacture of to-
2986 mato condiments, with principal offices in Rochester, N. Y., testified:

I have been in the canning business since 1912, and with the Snyder Packing Corporation since 1919. The annual volume of business done by the Snyder Company is from $10,000,000 to $12,000,000. We have sales offices in various cities, but no branch houses. We rent warehouse space in various markets and carry goods there for delivery.

2988 I am fairly familiar with the canning process, particularly in the vegetable lines east of the Mississippi, and west as far as it covers Iowa and Minnesota. The bulk of the vegetable canning business is done in the United States east of the westerly line of Iowa and Minnesota, and north of a line running east and west along the southern boundary of Virginia. The potential production capacity of the vegetable and fruit canning industry to-day is in excess of its average production. The excess might be from 10% to 20%.

2989 We distribute our products in great part under our own labels. Approximately 60% of our total output is distributed through jobbers or wholesalers; about 25% is sold to chain stores; and 15% to a miscellaneous third class, composed of associated bodies of retailers, department stores, and those few independent retailers who are generally classed as direct buyers, because of their large volume. Of the 25% that is sold to chain stores, about one-fourth, or between five and eight percent, of our

grand total is sold to our largest single chain store customers.

2990 Our chain store business is a desirable line; particularly where the distribution is under our own brands, less desirable where the distribution is for the buyers' brands.

We do not consider the portion of the business that we are seling to chains, nor the portion that is sold to our largest chain buyer, in any way a menace to our business [fol. 1296] position. The tendency of the large buyers is to specialize in certain containers and in certain products that we pack. In packing, we have to handle the entire crop as it comes from the farm—for illustration, peas in the pod, varying in size, tenderness, and character; and the resulting products, varying in their appeal to different customers. The tendency of the mass buyer is to specialize in those packages, grades, and character of products that will give a quick turnover, and frequently he is not a buyer for those other products that are incident to our packing and which must be sold in order completely to handle another crop as it is delivered to us. That is the principal embarrassment that we have in dealing with the mass buyers.

2991 Approximately 95% or more of our packing is made from seasonable vegetables delivered to us but once a year. These crops are in principal part grown especially for us by farmers under contract. The crop must be purchased and acquired by us immediately after it is ready for canning. We aim to have vegetables in the can the same day that they are harvested by the farmer.

2992 I am very familiar with the farm operations. In general, there is a leeway of 48 hours for judgment on the part of the canner and farmer as to whether or not the crop is in prime condition to harvest for canning. My experience as a farm boy would hardly qualify me to testify whether the time within which vegetables must be marketed after maturity is narrower or broader than that in

2992 which livestock must be marketed; but I think it is common knowledge that a pea wilts more quickly than a cow, after it has left the farm. From 80% to 85% of our volume is shipped by us in carload lots, the balance being shipped LCL. We use truck service to a small extent—both our own and hired truck lines. Transportation

charges by truck are approximately the same, as LCL freight charges for corresponding distances. We only use trucks where we feel that there is an advantage to ourselves or our customer—for example, in expediting the service, store door delivery, etc.

[fol. 1297] As to that portion of our business which we ship LCL, if another manufacturer of food products could go into the canning business, either manufacturing
2993 or jobbing, and handle similar shipments LCL at a lower freight charge, it would handicap our efforts to sell to the exact extent of the favored position in respect to the freight burden.

2994 If this freight charge were substantial, even though it applies to only ten percent of our business, it would be sufficient to affect our business position. That ten percent is the top ten percent of our business that enables us to make a profit on our entire operations. It may be particularly true of our business, because of the seasonal production. Our heavy investment is in plant and equipment, and if our production falls down ten percent, it would be practically impossible for us to make any margin of profit. In other words, the elimination of our LCL business would be sufficient to affect our profit substantially, unless it could be offset by carload business, to give us a compensating volume. It would handicap us even more in our relation with customers who desire less than carload shipments to replace stocks. Many shippers buying straight carloads initially will be obliged later to buy smaller lots of goods to fill in.

2995 The principal problem created for the canner by the chain stores is the problem of turnover. Chain stores, as a rule, buy to take care of their immediate needs. Our product is made once a year, and we have only one turnover a year. The industry as a whole is not financed to carry these goods and distribute them in monthly periods, using a twelve-time turnover, as the minimum that is sought by the chain stores. When the chain stores or mass buyers purchase only against immediate requirements, the stocks are necessarily left on the canner's hands; and the canner, having to liquidate his stocks to pay his banks, is often forced to sell at a sacrifice. This causes him [fol. 1298] a loss, and weakens his position and his ability to continue his canning operations another year.

We have those wide variance swings in the production of canned goods. One year will be big, and usually in those years the intelligent mass buyers refrain from buying in quantity, buying as they need the goods, following the market. The market goes down rapidly, and the losses that result prevent canners from packing even up to normal requirements the next year. Then we see a pack that is under the consuming requirements, and advancing prices; and the performance is repeated again. In other words, it is to a certain degree intelligent mass buying as opposed to individual, uncontrolled, unorganized selling.

2996 If the large meat packing concerns should set up a system of combination retail stores, and if their grocery lines in the canned goods department are obtained from manufacturers such as we, I would expect that they would be influenced by about the same reasons that the mass buyers are influenced by to-day and that they would handle their purchases in something of the same manner. I would rather anticipate that they would buy in about the same way, looking for a rapid turnover of goods in the same way that the chain stores are buying to-day. That has been the invariable history of the chain store.

2997-98 It eliminates many special items that are wanted only by a few customers, and concentrates on the items that will give a rapid turnover, usually at a minimum price. Thus, the entry of packers into the retail grocery and meat lines would increase the existing chain store problem that we have to meet.

3000-01 As I have said, it has been my experience that the large buyers concentrate on lower cost items. That leaves us with the higher cost items for distribution through other channels. These higher cost items are

2998 what we would call our "quality goods."

If the packers should decide to manufacture their [fol. 1299] own canned goods, I would consider that much less of a problem to the manufacturer to-day than the problem of their merely buying en masse. It would be merely another production factor, with the resulting overproduction, which we find at all times. I can see no way in which they would have any advantage, in the production viewpoint, over the small canner, because in the nature of canning, the crops have to be grown in separate localities spread all over the country. The canning units are neces-

sarily small. The raw material, especially vegetables, cannot be transported long distances, and I can see but little, if any, advantage for the packers, regardless of their resources, if they attempt to pack in very large volume, as compared with the individual canner, who is packing only the individual volume that is consistent with his little territory surrounding the hamlet where his canning factory is situated.

3000 If the packer went into the retailing, as well as manufacture, of canned goods, I do not think the small canner would have very much to dread.

3001 There are approximately 2,500 to 2,700 fruit and vegetable canners in the United States operating probably from 3,500 to 4,000 separate canneries.

Some years back, our business was directly from canner to wholesaler. The wholesalers distributed to the retailers. With the evolution of the business, and the new methods of doing business, it has come to pass that now about 60% of our business is from canner to wholesaler; and about 25% of it to retail chains; and about 15% of it to other retail organizations that have sufficient volume to buy directly. The large buying power of the chain organizations, coming into the business picture in recent years, has enabled them to go directly to the manufacturer and get in their retail units what they call for.

[fol. 1300] In my business, I have not experienced any discrimination on the part of railroads as regards the service given to me and the service given to my competi-

3002 tors. I have no knowledge of the practice of charging one shipper LCL rates lower than another shipper for the same goods over the same territory.

3004 (106) BENNETT C. NOTT, Associated with W. R. Roach & Company, engaged in the canning of fresh fruits and vegetables in Grand Rapids, Michigan, testified:

W. R. Roach & Company does an annual business of approximately $4,250,000. It distributes its products throughout the United States. We handle fruits and vegetables that can be raised in the State of Michigan.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would

give would be similar in nature and substance to that of Mr. James Moore.

3017 (107) JOHN V. MCINNESS, Secretary and General Manager of the Haxton Canning Company, a corporation engaged in the canning business in Oakfield, New York, testified:

I have been in the canning business 30 years—nine years with the Haxton Company.

3018 The annual business of the Haxton Company is about $2,000,000. We specialize in canning vegetables. We can apple sauce. Our markets are confined practically to New York, Pennsylvania, Ohio, and the New England States. Ninety percent of our shipments are by [fol. 1301] rail—practically all in carlots.

In lieu of the further testimony of this witness, it was stipulated that any further testimony the witness would give would be similar in nature and substance to that of Mr. James Moore.

3275 (108) ROYAL F. CLARK, President and General Manager of the Central Wisconsin Canners, a corporation engaged in the canning business at Beaver Dam, Wisconsin; and Vice-President of the Minnesota Valley Canning Company, a corporation engaged in the canning business at Lesuer, Minnesota, testified:

The Minnesota Company has the larger business, but my larger interest is in the Wisconsin Company.

3284 The Central Wisconsin Canners has an output of approximately 800,000 cases of a value of $2,250,000. We have more peas and corn at this plant. The Minnesota Company has an output of approximately 1,750,000 cases with a value of approximately $4,000,000.

3276 We distribute nationally, selling to chains and wholesale grocers. I was President of the National Canners' Association in 1924, and have kept that contact through assignment to committees. The National Canners' Association is a voluntary organization with headquarters here in Washington, maintaining laboratories for scientific research, giving aid and assistance to the canners generally

throughout the country on scientific matters. On the basis of this assignment, I have had opportunity to study and observe the canning industry throughout the country. I have visited plants throughout the United States. The Association has 900 members, each a separate canning concern.

There are about 3500 canners in the United States, 80% to 85% of whom would be classified as small canners, pack-
[fol. 1302] ing from 100,000 cases down to 2,000 or 3,000 cases. These small canners are located in small
3278 towns, villages, and small cities—from 300 inhabitants up to 10,000.

3277 The output of canned peas is approximately 20,000,000 cases a year. The output of canned corn is between 16,000,000 and 18,000,000 cases. There are 24 cans to a case of what we call "No. 2 tins," one pound and four ounces. The annual output of canned tomatoes runs from 12,000,000 to 16,000,000 cases; string beans, around 8,000,000 cases. I have enumerated the principal items of vegetable canning.

Canned peas would probably have an average value of about $2.70 per case, making the total value of the output of canned peas per year approximately $54,000,000. Canned corn has an average value to the canner of approximately $2.20 a case. I do not know about canned tomatoes or string beans, but the value of each of them would probably run around $2.50 a case.

Petitioners' Exhibit 172 is the Census of Manufactures for 1927, published by the Department of Commerce, relating to canning and preserving. Pages 9, 15, 16 and 17 deal with statistics on production of vegetables under the various classes, with tonnage and value, etc.

3278 One-third of the entire output of the Central Wisconsin Canners goes to chain store customers. The Minnesota concern is developing an advertised brand; and their sales to chain stores are larger, but I haven't the figures.

3279 The Wisconsin concern sells approximately ten per cent of its total output to its largest single chain store customer.

3291 In dealing with chains, we sell direct, eliminating the wholesaler. That has been going on for 15 years.

3279 We obtain the vegetables that we pack within a radius of six or eight miles from each of our eight

[fol. 1303] plants, which cover a section of four counties right around Beaver Dam. We feel that if we are to produce quality, it is impracticable to go farther than that for our raw material. We feel that to produce the best quality of canned peas or canned corn, the product must be canned as quickly as possible after it is severed from the vine or stalk. Therefore, we narrow down the territory in which we operate.

3285 In order to assure good quality, in order to induce the farmers to be interested in quality, we purchase our seed at approximately six dollars a bushel, and sell it to the farmers at approximately three dollars a bushel, and take the loss at the outset.

3280 The production of all canned commodities since the war has been just a little ahead of consumption. Each year there has either been a carryover of the canned product, or else a restricted production the following year.

I have given considerable thought to the effect upon
3280 the canning industry of the entry into the retail meat and grocery business of such large meat packers as Swift and Armour.

3281 In the first place, mass buying thus far has tended toward featuring a price appeal. Mass buyers of canned goods thus far have purchased a second-grade article and featured it at a price. They advertised a commodity under their best label at a lower price than competitors; and in many instances—in the majority of instances, they substituted a second-grade quality under their best label. That injures the canner and the farmer greatly, because neither the farmer nor the canner makes any money out of the lower or second grade. He makes his money out of the higher grade. There are three grades: Fancy, extra standard, and standard. We pay three and one-half cents a pound for fancy peas; two and one-quarter cents for extra standard; and one and one-half cents for standard. We contract to take the whole crop, and therefore both the second and third grades are taken and canned, if suitable.

3297 The quality of the pea is governed by its age. If the farmer was unable to sell his peas within two or three hours after they were picked, they would cease to be of fancy quality and would be one of the inferior grades.

3282 Assuming that the packers follow the system of other mass buyers and large distributors of featuring [fol. 1304] price appeal and second quality, I am forced to the conclusion that it would greatly injure the canners. The meat packers, when they were buying before, handling canned goods in large quantities, prior to the entry of the consent decree, did that. I personally sold them at that time second-grade articles and they sent out their best labels to put on, and had them labelled at the plant and shipped. That is in connection with peas, I am not sure about corn. That creates more demand for the second or third-class article; but in my opinion through advertising and pushing by large operators, the consumer is deceived. The market for the higher-grade articles, when these articles are exploited in these ways, starts to fall.

3283 In order to make a profit, it is very necessary that the higher-grade articles be advantageously disposed of. In my own business, we do not keep the cost on the different articles; but we have an average cost. The lower or standard grade is sold below the average cost. The extra-standard or middle grade is sold very close to the average cost. Occasionally, there is a little profit there, but whatever profit the canner makes comes out of the higher grade.

3291 A. & P. and Kroger have been doing the most buying in the past five or ten years. So far as peas are concerned, I have been told by the A. & P. that over 50% of all the peas that A. & P. buys are the standard grade. Our output of the fancy grade is about 65%, the other 35% being divided between standard and extra-standard.

3292 A. & P. largely sells the peas that it buys from us under its own private brand. The A. & P. advertises the A. & P. label as its top label. They have not lately been putting the same label on the fancy grade of peas as on the standard.

3293 I am a lawyer and somewhat familiar with the [fol. 1305] Federal Pure Food Law. In speaking of mass buyers putting their best labels on second grade goods, I mean they usually put on the label, "Our finest quality," and the consumer thinks that is the finest quality. In calling it, "Our finest quality," I presume they are strictly in the law, regardless of what it is. Then they put

a price on the goods that will move them. The point is that a store that pushes standard grade or the extra standard grade makes it the leading class of peas that it sells; and it puts its pressure and its labels, and its prices behind that.

3284 I would say the smaller canners ship 90% or more in carloads. That is also our case.

3285 If the packers should go into the canning business, since the present production is slightly ahead of consumption, someone would have to give way, and presumably it would be the smaller and weaker canners. Those with advertised brands who have created a consumption demand for their product would not be hurt as much as those who sell entirely for buyer's label.

3294 I do not think that increasing the facilities for economical distribution of the products of the canneries would help to move the oversupply of canned goods in this country.

3286 If the packers can peas in our section of the country, they would have to can all three grades, and whether it be our company or Armour & Company that had a canning plant, they would have the problem of selling fancy, extra standard, and standard peas. But big production produces more of the lower grades than small production does, because a large concern is not able to give the canning the attention that a small concern can.

3288 We buy peas in the field, direct the delivery and tell the farmer when to cut, and he brings them in. Al- canners do that; and the farmer is interested in selling his fancy grade as much as he is the other grades; and if there were a canner who took only the lower grade, the [fol. 1306] farmer would favor his competitor who took all three grades.

Beaver Dam has a population of 10,000. We have
3285 three chain stores in Beaver Dam, and ten or 12 independent retailers. The three chain stores are
3289 owned—one by Kroger, one by National Tea, and one by A. & P. I think the first chain store came five or six years ago. The independents have been there a good many years. The chain stores are apparently progressing.

3285 The chains get all of their merchandise by trucks out of Milwaukee, a distance of 65 miles. Their

3289 trucking and overhead at a distance of 65 miles from their warehouse is, I think, somewhat of a handicap to them.

3285 The independent retailers get their products by local shipments.

3289 All of the 12 independent retailers were there when the chains came in. Things have been in a sort of static condition in Beaver Dam.

3285 If the meat packers went into the retailing business, and were able to come in there with carload lots, it is my opinion that the independent retailers would not be able to stand up under it. I think that would be a distinct disadvantage to any small town. In our town, the library, park, and the hotel all come from the business people. For the good of rural communities if they are to continue to exist, and I think they are necessary primarily because the local market is the best market that the farmer can have, it is my opinion that local merchants should be encouraged rather than discouraged.

3290 In our city, the items of rent for the chain store or the individual unit store, the electric light, gas, telephone, and all those items, are paid to a local city or state institution. Each chain store has a manager, who has a home, either rented or owned.

There are days on which the chain stores feature prices on certain commodities. That lasts a day, and then they [fol. 1307] go back. The independent merchants deal very little in leaders in our town. Except as to leaders, in my opinion, the chain stores do not sell to the consumer the necessaries of life at lower prices than the average single merchant does.

3271 (109) J. CHARLES LAUE, Managing Editor of Forbes Magazine, residing at 120 Fifth Avenue, New York City, testified:

Government Exhibit No. 100 is page 22 of Forbes Magazine for February 1, 1930; and contains an article entitled, "Meat in packages to replace butcher's cuts," by Louis F. Swift, President of Swift & Company. I am familiar with that article and the methods by which it came to be inserted in our magazine. To the best of my knowledge, that article was written by Mr. Swift. We had been very much inter-

ested in the development of the packing industry, and wrote to the company, asking for an article on the more recent developments. The article in question here was sent to us. We also had a number of letters relating to illustrations. When they were received, the article was published. The letters were signed "Louis F. Swift," with the initials underneath. The letterheads were labelled "Swift & Company, Union Stockyards, Chicago, Louis F. Swift, President."

STIPULATION RE EXHIBITS

2529, 3297 By stipulation of counsel, Government Exhibit 101, being a file of Swift & Company yearbooks, 1921 to 1930, inclusive, was admitted in evidence for the purpose of reference by any of the parties to any material therein contained which they may deem relevant.

[fol. 1308] Government Exhibit 94 consists of a number of letters the identity and authenticity of which (2832-54) were established by stipulation of counsel. The (2854-63) terms of the stipulation are contained in the (3037-45) following statements of counsel:

3037 Mr. Teegarden: These letters consist of two classes; first, letters between railroad representatives and certain officials of Armour & Company and Swift & Company; and certain other letters which are between officers or employees of the railroads themselves.

As to the letters between officers of the railroads, sometimes they make reference to conversations with Mr. O'Hara, Traffic Manager of Swift and Co., and Mr. Mayfield, also of Swift & Company, and in one case Mr. Ellis of Armour & Company; and my understanding is that in those cases we will stipulate that the writers of those letters, if called, would testify to the same substance and effect as those letters, saving to Mr. Hogan any objections as to the materiality and competency of that evidence.

In offering these letters I wish to state the purpose for which they are offered. They relate to what is known as the reciprocal buying and shipping arrangement between industrial concerns and the railroads, an arrangement whereby, in effect, the industrial concern says, if you will

buy certain products in which we are interested, we will make more shipments over your line; or the obverse would be if you do not buy we may re-route our shipping otherwise; or the invitation may come from the opposite direction, from the railroads, to the effect that if you do [fol. 1309] make more shipments over our lines, then we will patronize these goods in which you are interested.

These letters, we believe, indicate that Swift & Company and Armour & Company use the railroad patronage which they control to promote and induce the use by the railroads of railroad equipment manufactured and sold by certain corporations in whose stock they are interested. These two corporations are, as has been referred to previously in the testimony, the Mechanical Manufacturing Company, whose stock, until its dissolution, was owned by individual members of the Swift family and some of the employees of Swift & Company; and the Waugh Equipment Company, stock in which is owned by certain employees or officers of Armour & Company.

The purpose for which we are offering this is to show the readiness of these corporations to use their business position and control their business to induce the sale of products in which they are interested. In showing this we concede that this reciprocal shipping and buying arrangement is not peculiar to Armour and Swift; that it is frequently resorted to by other industrial concerns, and sometimes to a degree equal to or perhaps greater than any that we have found on the part of Armour and Swift in this case.

We are not prepared to state at this time that this reciprocal buying and shipping arrangement is in itself and standing alone illegal, but we believe it is relevant to the question of what use will be made of the power of these two petitioning defendants in case they enjoy the business position which might result after a modification of the Consent Decree. In other words, the trend toward monopoly or danger of monopoly is a result that may come from size plus a number of attendant circumstances and conditions showing how the corporation or concern is willing to use its size and power; and we believe these cir- [fol. 1310] cumstances are simply illustrative of that question; and it is for that purpose that they are offered in evidence.

The letters between the railroads and representatives of Swift & Company are offered as evidence of the operations of Swift & Company; and the ones between employees and officers of the railroads are offered as evidence of certain effects of the operations of Swift & Company upon the railroads.

The principle upon which we offer these letters within the railroad as evidence in this case is that in this matter there are two questions; first, what influence did an industrial concern offer, or what inducement did it make; and secondly, what effect did that have on the person or concern to whom it was offered? Now, these letters were written in the course of that effect taking place. They are a part of the effect itself, and, consequently, in so far as they occupy that status, we think they are admissible as a part of the res gestæ.

3040 Mr. Hogan: In order that the Court may have a complete picture of the situation, I might add a word as to how these questions arose, and make a brief statement with regard to stipulating all these facts.

There has been some question regarding reciprocity between railroads in buying from manufacturing concerns who are shippers. There cannot be any such thing as manufacturing on any such scale in this country which does not bring with it the incident of shipping; it is hard to imagine the manufacturing of any article that does not go to the railroads. So there has grown up a policy of a partner shipper who deals in a commodity with railroads to favor with his traffic, when there are competing railroads to choose among or between, the railroads who favor the [fol. 1311] shipper with their orders; and, on the other hand, the policy of the traffic departments of the railroads to favor, quality, price and service being equal, with their orders for commodities needed by the railroads, those manufacturing concerns or dealers in commodities who are given a fair share of shipments by the railroads.

There are certain proceedings known to all of us regarding that question of reciprocity between shipper and carrier. The first proceeding is a case before the Federal Trade Commission as to whether or not there was anything that that body should take cognizance of in the use by officers of Swift & Company of the traffic of Swift &

Company to induce purchases of articles manufactured by the Mechanical Manufacturing Company. That case has gone to evidence and is pending.

The second one is the case of the Waugh Equipment Company and two individuals, in which the question arose, with the distinct understanding that Armour & Company was not a party to it, as to whether or not certain officials of Armour & Company who have a stock interest in the Waugh concern should use their position to bring that to the attention of the railroads. That case is before the Federal Trade Commission.

The third and the most comprehensive is an inquiry now being conducted throughout the country by the Interstate Commerce Commission, known as a reciprocity hearing, in connection with which the Interstate Commerce Commission is discussing the whole trend of reciprocity dealing for the purpose of ascertaining whether or not there is necessary in that regard any action whatever on the part of the Commission. In those cases these certain documents were produced. We admit their authenticity; some of them are letters from officials of Swift & Company; and, in a few instances, Armour & Company, to railroad offi- [fol. 1312] cials. We do not only admit their authenticity, but we admit their admissibility. Others are letters between an official of a railroad and another official of the railroad, intra-departmental railroad communications or memoranda on the subject. We admit their authenticity but deny their admissibility here. We object to the admissibility of anything that A and B might have said or written to each other with which we had no connection and to which we were not parties. But we do admit this, as Mr. Teegarden said: Some of these letters from A, a railroad official to B, another official of the same railroad, indicate that the writer had a conversation with a Mr. O'Hara of Swift & Company, and the letter purports to set forth the substance of what Mr. O'Hara said to the writer. For instance, I have in mind what Mr. Duke wrote to Mr. Davis. We have produced Federal Trade Commission's Exhibit No. 141 in that connection. In a case of that kind we admit the facts as stated by the writer as having been said by Mr. O'Hara or Mr. Jones, whichever he quotes, and that if the writer were here he would testify in substance that he had said that. Your Honor will

recall the testimony of Mr. White regarding the interest of Armour & Company in the Waugh Equipment Company, and the testimony of Mr. Swift regarding the interest of himself and his brother individually and some other officials of Swift & Company in the Mechanical Manufacturing Company, which company has since gone out of business and is in liquidation, according to the testimony of some witnesses.

With that statement, I think the Court will have a complete understanding of the situation, and the two statements may be taken as a stipulation.

[fol. 1313] STIPULATION RE TESTIMONY

In lieu of separately stating the testimony of the following witnesses, with reference to agreements and unfair practices in the meat packing business—

For the United States:

Morris F. Pick, President and General Manager, The Atlas Soap Works, Jersey City, N. J.

Harry J. Theobald, Theobald Animal By-products Co., Kearney, N. J.

Samuel Ginsburger, fat solicitor for Theobald Animal By-products Company, Kearney, N. J.

Edward Rogutsky, fat solicitor for Theobald Animal By-products Company, Kearney, N. J.

James L. Eggleston, Vernon Meat Company, Vernon, Texas.

Thomas G. Brown, Cook & Brown, Dallas, Texas.

Clyde T. Hays, salesman, Waples Platter Company, Lubbock, Texas.

Frank Redman, salesman, Waples Platter Co., San Angelo, Texas.

Elbert B. Bloodworth, service station manager, Magnolia Petroleum Company, Lubbock, Texas.

W. L. Young, salesman, Hoffman & Hayman Coffee Company, San Antonio, Texas.

Howard A. Pearson, wholesale distributor of lubricating oils, Lubbock, Texas.

John A. Walker, General Manager, David Cole Creamery Company, Omaha, Neb.
George A. Chapman, President, Warrensburg Creamery Company, Warrensburg, Missouri.
A. L. Kantz, Kantz Produce, Muscatine, Iowa.
H. H. Snyder, Davenport, Iowa.
H. Fay Hawkins, owner and manager, Muscatine Creamery, Muscatine, Iowa.
George Werner, Manager, Farmers Union Cooperative Creamery, Deschler, Nebraska.
H. G. Holtzen, bookkeeper, Farmers Union Cooperative Creamery, Deschler, Nebraska.
William Castberg, Castberg Creamery, Powell, Wyoming.
E. J. Tucker, Texas Refining Company, Cody, Wyoming.
[fol. 1314] Jesse Hubbard, farmer, Belfry, Montana.

For the petitioning defendants, in rebuttal:

H. J. Bird, Assistant Manager, Poultry Department, Swift & Company, Chicago, Illinois.
F. E. Gould, General Superintendent of Creameries, Produce Department, Armour & Company, Chicago, Illinois.
George L. Warner, District Manager, Southwestern Produce Plants, Armour & Company, Wichita, Kansas.
G. H. Trader, Manager, produce plant, Swift & Company, Sedalia, Mo.
A. C. Peterson, Manager, produce plant and creamery, Swift & Company, Muscatine, Iowa.
J. M. Yates, Manager, produce plant, Swift & Company, Beatrice, Neb.
James F. Furlong, Branch-House District Manager, Armour & Company, Fort Worth, Texas.
J. W. DeBorss, Manager, Harrison plant, Swift & Company, Kearney, N. J.
L. E. Dunker, Supervisor, Southwestern Produce Plants, Produce Department, Swift & Company, Chicago, Illinois.
John B. Teel, Car Route Sales Manager, Armour & Company, Fort Worth, Texas.
W. P. Lindsey, Branch House Manager, Armour & Company, San Angelo, Texas.
John E. Adcock, Branch House Salesman, Armour & Company, Brownwood, Texas.

Zola Short, Branch House Salesman, Armour & Company, Dallas, Texas.
E. M. Sullivan, District Manager, Swift & Company, Fort Worth, Texas.
Homer G. Petit, Creameries Manager, Armour & Company, Superior, Neb.
A. J. Harris, Branch Manager, Swift & Company, Amarillo, Texas.
John M. Connolly, Branch House Manager, Swift & Company, Dallas, Texas.
C. C. Johnson, Salesman, Swift & Company, Vernon, Texas.
W. J. Clingman, Manager, Car Route Sales Department, Swift & Company, Fort Worth, Texas.

the following, substantially the language of the opinion of Mr. Justice Bailey, is adopted as a summarized statement of the substance and effect of such testimony:

"There is some testimony as to certain sporadic cases of unfair practices, and fixing of prices. There were certain instances in the collection of fats in the Metropolitan Dis-
[fol. 1315] trict of New York City in which Swift and Armour in competition with some of their competitors en-
gaged in the practice of following each other's
2687-88 trucks to ascertain the location of their customers, and paid bonuses and large prices to get them for themselves. In 1923 Swift & Company's head buyer and superintendent of fat collection in New York offered to agree with a competitor upon an allocation of customers, and upon the prices to be paid to their respective customers. An agreement allocating customers was entered into, but that arrangement continued for a very little while. It does not appear that the acts of Armour and of Swift were any worse than those of their competitors, nor that the final agrements were forced upon the others by Armour and Swift, but were for the benefit of all. There is also testimony as to threats of cutting prices made in 1930 by defendant's representatives to a competitor in Texas; that Wilson, Armour and Swift were working under an agreement in Oklahoma as to minimum prices to be obtained on fresh pork; that in certain territories salesmen of Armour, Swift, Wilson and other packers since the summer of 1929 received weekly confidential lists of identical minimum prices; that during the same time, Armour & Company in-

duced the Vernon Meat Company, of Vernon, Texas, to join with them and others for the observance of minimum prices to their retail customers, the prices being furnished unsigned in a plain envelope, marked "strictly private." While the evidence is conflicting on these points, I am inclined to think that these charges are substantially true, but there is no evidence that the officials in the main offices of the defendants had any knowledge of these practices, but on the other hand they had forbidden any agreements or arrangements to fix prices. In fact, the prices of the different defendants did not coincide. Armour and Swift, in 1929, endeavored to put into effect what was known as a "service-at-cost" plan of paying for butterfat, by which each seller of milk paid a fixed charge for the expense of measuring the amount of butterfat in his milk, and in order to force this upon their competitors, advanced the price of butterfat, while the price of butter was not affected. They failed in their attempt * * *"

[fols. 1316 & 1317] At the close of the testimony of the Government witnesses with reference to agreements and unfair practices in the meat packing business, the Government rested its case.

Counsel for interveners were present throughout the proceedings in this Court, cross-examined witnesses and otherwise participated in these proceedings. At the conclusion of the testimony offered in behalf of the Government, counsel for the American Wholesale Grocers' Association stated:

Mr. Watkins: If Your Honor please, there was offered in evidence Exhibit 154 of my exhibits—it goes under the name of a Petitioners' Exhibit—and at that time the witness questioned whether or not any such sale as that mentioned was made. Mr. Hogan has agreed that I shall put in the information with reference to that, which I have received
3300 from the man who received it, and I offer as an American Grocers' Association Exhibit a check dated Gordonsville, Virginia, May 29, 1930, payable to Armour & Company, for $24.50, sent to L. E. Yowell, and as part of that exhibit, attached to it, the freight bill for the transportation referred to in the Exhibit 154. * * * As

explained yesterday, the testimony already offered for the Government covers the same grounds that we would have presented, and there is no use of my taking the time of the Court to present any other testimony.

And counsel for National Wholesale Grocers' Association stated:

3301 Mr. Ford: May it please the Court, any testimony we might produce would be simply cumulative as to that already offered by the Government, and we will not offer any.

Meat Packing Schedules According to Value for 1927

	Total	5–20	20–100	100–500	500–1000	1,000,000 and more.
United States	1250	64	267	429	163	327
1 Alabama	8	1	2	3	..	2
2 Arizona	8	1	3	3	..	1
3 Arkansas	2	..	..	1	1	..
4 California	94	2	14	29	19	30
5 Colorado	25	1	8	9	3	4
6 Connecticut	4	..	2	1	..	1
7 Delaware	9	3	3	1	1	1
8 District of Columbia	8	..	1	5	1	1
9 Florida	6	..	1	2	3	..
10 Georgia	8	..	3	3	..	2
11 Idaho	14	1	5	8	..	..
12 Illinois (State at large)	81	2	..	23	14	42
12x Chicago	..	..	..	..	..	..
13 Indiana	58	3	11	20	12	12
14 Iowa	21	..	3	7	3	8
15 Kansas	29	..	5	10	4	10
16 Kentucky	21	..	4	7	4	6
17 Louisiana	9	1	1	4	3	..
18 Maine	11	2	4	4	1	..
19 Maryland	40	5	15	11	3	6
20 Massachusetts	40	7	9	10	3	11
21 Michigan	45	4	10	21	..	10
22 Minnesota	12	1	..	3	..	8
23 Mississippi	3	..	2	1	..	..
24 Missouri	45	..	13	17	6	9
25 Montana	17	1	6	8	..	2
26 Nebraska	14	..	1	6	2	5
27 Nevada	3	..	..	2	1	..
28 New Hampshire	2	..	2	..	..	..

29 New Jersey	35	..	5	11	7	12
30 New Mexico	1	..	..	1	..	..
31 New York (State at large)	117	3	23	31	17	43
31x New York City	..	..	..	..	..	..
32 North Carolina	7	2	2	1	1	1
33 North Dakota	2	..	..	..	..	2
34 Ohio	120	3	17	50	21	29
35 Oklahoma	7	..	..	4	..	3
36 Oregon	17	1	4	9	2	1
37 Pennsylvania (State at large)	152	10	52	46	15	29
37x Philadelphia	..	..	..	..	..	..
38 Rhode Island	6	..	1	2	..	3
39 South Carolina	4	1	2	..	1	..
40 South Dakota	5	..	..	2	..	3
41 Tennessee	13	1	3	1	3	5
42 Texas	24	..	3	11	2	8
43 Utah	9	1	2	3	1	2
44 Vermont	..	..	..	..	..	..
45 Virginia	26	3	9	12	1	1
46 Washington	36	4	11	12	3	6
47 West Virginia	9	..	1	5	2	1
48 Wisconsin	19	..	4	6	2	7
49 Wyoming	4	..	..	3	1	..

[fol. 1319] PET. EX. 4—Oct. 7, 1930

The Number of Slaughtering and Meat Packing Establishments in the United States
(Classified According to Size of Establishments as Measured by Value of Products)

Value of products	Number of establishments								
	1909	1914	1919	1921	1923	1925	1927	1928	1930
Less than $5,000	16*	25*	21*	47*	**	**	**	....	....
$5,000–$20,000	134	182	129	142	162	84	64	....	....
$20,000–$100,000	438	427	338	304	412	314	267	....	....
$100,000–$500,000	467	357	385	360	390	400	429	....	....
$500,000–$1,000,000		82	121	112	141	142	163	....	....
$1,000,000 and over	166	206	310	266	292	329	327	....	....
Total	1,205*	1,254*	1,283*	1,184*	1,397*	1,269	1,250	....	....

*Establishments with products valued at less than $5,000 not included in total.
**In 1923 and 1925 no data were collected from establishments reporting products valued at less than $5,000.

Source of Data:

Classified data from the Bureau of the Census, United States Department of Commerce. Federally inspected establishments from the Bureau of Animal Industry, U. S. Department of Agriculture.

[fols. 1320–1322]

PETITIONERS' EX. 7

United States Department of Agriculture, Bureau of Agricultural Economics

Statistics of Meat Production, Consumption and Foreign Trade of the United States, 1900–1929
Preliminary Report

Washington, D. C., April, 1930

[fol. 1323]

1.—Animals Slaughtered

Number of Animals Slaughtered Annually Under Federal Inspection and Estimated Total Number Slaughtered (Including Farm) in United States

(In thousands—i.e., 000 omitted)

Calendar year	Cattle		Calves		Sheep and lambs		Swine	
	Federally inspected	Total	Federally inspected	Total	Federally inspected	Total	Federally inspected	Total
1900	5,030	10,242	365	3,235	6,380	12,015	23,990	50,470
1901	5,390	11,088	490	3,585	7,037	12,358	24,960	51,870
1902	5,847	11,697	612	3,931	8,010	13,038	23,535	48,260
1903	6,242	12,463	717	4,221	8,424	13,683	22,961	47,900
1904	6,223	12,099	805	4,471	8,067	13,126	24,726	49,987
1905	6,727	12,640	846	4,744	7,873	12,823	25,324	51,540
1906	6,926	12,944	1,103	4,834	8,224	13,371	26,649	52,680
1907	7,633	13,287	2,024	6,211	10,252	13,360	32,885	54,058
1908	7,279	12,852	1,958	6,048	10,304	13,526	38,643	60,515
1909	7,714	13,611	2,189	6,516	11,342	14,725	31,395	53,220
1910	7,807	13,541	2,238	6,553	11,408	14,797	26,014	47,076
1911	7,619	12,958	2,184	6,264	14,020	18,057	34,133	56,646
1912	7,253	11,979	2,278	6,348	14,979	19,247	33,053	55,564
1913	6,978	11,478	1,902	5,285	14,406	18,520	34,199	57,046
1914	6,757	11,004	1,697	4,661	14,229	18,290	32,532	55,501

PETITIONERS' EX. 7—Continued

Calendar year	Cattle		Calves		Sheep and lambs		Swine	
	Federally inspected	Total	Federally inspected	Total	Federally inspected	Total	Federally inspected	Total
1915	7,153	10,822	1,819	4,640	12,212	15,756	38,381	62,017
1916	8,310	12,027	2,367	5,774	11,941	15,408	43,084	67,613
1917	10,350	13,724	3,143	7,031	9,345	12,149	33,910	56,901
1918	11,829	15,750	3,456	7,514	10,320	13,359	41,214	64,796
1919	10,091	14,838	3,969	8,445	12,691	16,317	41,812	65,190
1920	8,609	13,885	4,058	8,455	10,982	14,180	38,019	61,890
1921	7,608	12,271	3,808	7,771	13,905	16,710	38,982	62,957
1922	8,678	13,148	4,182	8,363	10,929	14,112	43,114	68,105
1923	9,163	13,883	4,500	8,824	11,529	14,862	53,334	79,843
1924	9,593	14,400	4,935	9,466	11,991	15,441	52,873	79,631
1925	9,853	14,706	5,353	10,099	12,001	15,454	43,043	68,294
1926	10,180	14,971	5,153	9,542	12,961	16,689	40,636	65,779
1927	9,520	14,000	4,876	9,030	12,883	16,589	43,633	69,250
1928	8,467	12,452	4,680	8,667	13,488	17,348	49,795	76,593
1929	8,324	12,241	4,489	8,313	14,023	18,048	48,445	74,945

Relatively small numbers of goats and horses are slaughtered in plants operating under Federal Inspection. The total volume of goat meat produced from Federally inspected slaughter in 1928 and 1929 amounted to less than one million pounds. A large part of the meat from horses is exported, and the remainder is used for dog and other animal feed, and in menageries and zoological parks. The numbers of the goats and horses slaughtered are reported monthly and annually by the Meat Inspection Division, Bureau of Animal Industry.

2. All Meats

Estimated Annual Production, Exports, Imports, and Consumption of All Meats (excluding lard) in United States

Calendar year	Slaughter (dressed weight)			Exports	Imports (less re-exports)	Consumption (dressed-weight basis	
	Total	Federally inspected	Other			Total	Per capita
	Million pounds	Million pounds	Million pounds	Million pounds	Million pounds	Million pounds	Pounds
1900	12,388	5,976	6,412	1,286	.....	10,873	142.8
1901	12,657	6,128	6,529	1,323	....	11,101	142.8
1902	12,163	6,036	6,127	1,019	....	10,921	137.7
1903	13,120	6,486	6,634	997	....	11,920	147.2
1904	13,404	6,775	6,629	963	....	12,253	148.3
1905	13,428	6,874	6,554	1,098	....	12,093	143.7
1906	13,706	7,134	6,572	1,126	....	12,381	144.2
1907	14,680	8,690	5,990	971	....	13,560	155.1
1908	14,396	8,666	5,730	862	....	13,386	150.3
1909	14,362	8,402	5,960	651	....	13,585	149.2
1910	13,648	7,836	5,812	437	....	13,121	141.6
1911	14,454	8,727	5,727	564	....	13,777	146.5
1912	13,749	8,349	5,400	518	....	13,128	137.4
1913	13,729	8,267	5,462	518	36	13,152	136.3
1914	13,299	8,101	5,198	491	307	13,015	133.0
1915	13,816	8,849	4,967	1,309	147	12,394	124.8
1916	14,626	9,677	4,949	1,314	40	12,866	127.7
1917	13,932	9,438	4,494	1,310	36	12,273	120.1
1918	16,405	11,319	5,086	2,428	131	13,477	120.1
1919	16,006	10,577	5,429	2,169	72	13,655	130.0
1920	15,511	9,689	5,822	1,089	116	14,560	137.8
1921	15,182	9,671	5,511	819	46	14,450	133.3
1922	16,295	10,539	5,756	775	49	15,249	138.8
1923	17,912	11,923	5,989	1,005	33	16,648	149.0
1924	17,867	11,837	6,030	777	34	17,021	149.7
1925	17,005	11,179	5,826	592	30	16,575	143.7
1926	17,245	11,354	5,891	465	59	16,753	143.0
1927	16,872	11,272	5,600	252	114	16,570	139.7
1928	16,955	11,317	5,638	360	143	16,569	138.0
1929	16,803	11,184	5,619	407	154	16,607	136.8

[fol. 1329]

PETITIONERS' EX. 7—Continued

7.—Lard

Estimated Annual Production, Export, and Consumption of Lard in United States

Calendar year	Production			Exports	Imports (less re-exports)	Consumption	
	Total	Federally inspected	Other			Total	Per capita
	Million pounds	Million pounds	Million pounds	Million pounds	Million pounds	Million pounds	Pounds
1900	1,617	821	796	615	.....	1,002	13.2
1901	1,614	829	785	612	.....	1,002	12.9
1902	1,439	737	702	507	.....	932	11.7
1903	1,496	766	730	541	.....	955	11.8
1904	1,596	841	755	571	.....	1,025	12.4
1905	1,551	799	752	708	.....	843	10.0
1906	1,644	882	762	685	.....	959	11.2
1907	1,777	1,137	640	594	.....	1,183	13.5
1908	1,790	1,171	619	587	.....	1,203	13.5
1909	1,504	886	618	462	.....	1,042	11.5
1910	1,434	792	642	382	.....	1,052	11.4
1911	1,673	1,010	663	610	.....	1,063	11.3
1912	1,626	965	661	558	.....	1,068	11.2
1913	1,681	1,006	675	581	.....	1,100	11.4
1914	1,657	969	688	465	.....	1,192	12.2
1915	1,775	1,081	694	494	.....	1,281	12.9
1916	1,849	1,159	690	463	.....	1,368	13.6
1917	1,557	926	631	388	.....	1,195	11.7
1918	1,983	1,260	723	559	.....	1,374	13.3
1919	2,039	1,323	716	789	.....	1,292	12.3
1920	2,056	1,321	735	643	.....	1,416	13.3
1921	2,114	1,379	735	903	.....	1,223	11.3
1922	2,357	1,575	782	799	.....	1,558	14.2
1923	2,783	1,971	812	1,075	.....	1,707	15.3

1924	2,746	1,923	823	986	.....	1,749	15.4
1925	2,223	1,452	771	719	.....	1,522	13.2
1926	2,324	1,513	811	733	.....	1,584	13.5
1927	2,356	1,557	799	717	.....	1,634	13.8
1928	2,594	1,750	844	801	.....	1,763	14.7
1929	2,598	1,763	835	866	.....	1,735	14.3

[fol. 1330]

8.—Summary of per Capita Consumption of Dressed Meats and Lard in United States

Product	1900 Pounds	1901 Pounds	1902 Pounds	1903 Pounds	1904 Pounds	1905 Pounds	1906 Pounds
Beef	67.8	69.0	68.5	76.0	73.6	73.0	72.6
Veal	3.5	3.9	4.4	4.7	5.1	5.4	5.4
Lamb and mutton	6.8	6.9	7.0	7.2	6.8	6.5	5.6
Pork (ex. lard)	64.7	63.0	57.8	59.3	62.8	58.8	59.7
Total meat	142.8	142.8	137.7	147.2	148.3	143.7	144.2
Lard	13.2	12.9	11.7	11.8	12.4	10.0	11.2

Product	1907	1908	1909	1910	1911	1912	1913
Beef	77.5	71.5	75.4	71.1	67.7	61.1	60.6
Veal	6.7	6.4	6.9	6.8	6.4	6.3	5.1
Lamb and mutton	6.4	6.3	6.6	6.4	7.8	8.1	7.5
Pork (ex lard)	64.4	66.1	60.1	57.1	64.5	61.8	63.0
Total meat	155.1[1]	150.3	149.2[2]	141.6[3]	146.5[1]	137.4[1]	136.3[1]
Lard	13.5	13.5	11.5	11.4	11.3	11.2	11.4

Petitioners' Ex. 7—Continued

Product	1914 Pounds	1915 Pounds	1916 Pounds	1917 Pounds	1918 Pounds	1919 Pounds	1920 Pounds	1921 Pounds
Beef	58.8	54.5	56.0	59.5	63.0	61.6	63.1	59.9
Veal	4.6	4.3	5.3	6.5	7.4	7.7	7.6	7.0
Lamb & mutton	7.4	6.3	6.1	4.6	4.7	5.8	5.5	5.9
Pork (ex. lard)	62.3	59.5	60.1	49.3	54.8	54.8	60.5	63.5
Total meat	133.0[1]	124.8[2]	127.7[1]	120.1[2]	130.1[2]	130.0[1]	136.8[1]	136.3
Lard	12.2	12.9	13.6	11.7	13.3	12.3	13.3	11.3

Product	1922	1923	1924	1925	1926	1927	1928	1929
Beef	60.4	61.4	61.6	62.2	63.6	58.4	51.7	51.4
Veal	7.8	7.7	8.2	8.7	8.2	7.4	6.8	6.8
Lamb & mutton	5.0	5.2	5.2	5.2	5.5	5.4	5.6	5.8
Pork (ex. lard)	66.1	74.7	74.7	67.6	66.7	68.5	73.9	72.8
Total meat	138.8	149.0	149.7	143.7	143.0	139.7	138.0	136.8
Lard	14.2	15.3	15.4	13.2	13.5	13.8	14.7	14.3

[1]Includes 0.1 pound goat meat.
[2]Includes 0.2 pound goat meat.

(Here follows Petitioner's Exhibit 1, side folio 1331)

[fol. 1331]

PETITIONER'S EXHIBIT 10—October 8, 1920

Number of Cattle, Calves, Sheep (Including Goats) and Hogs Slaughtered and Total Output of Meat and Lard for the United States and for Each of the Four P
and the Proportion of Animals Slaughtered and of Meat and Lard Produced by Each of the Four Packers Annuall

Firm	Year	Cattle		Calves		Sheep, lambs & goats	
		No. of head	Per cent of U. S. total	No. of head	Per cent of U. S. total	No. of head	Per cent of U. S. total
Estimated total slaughter for United States	1920	13,885,000	100.0	3,455,000	100.0	14,300,000	100.0
	1921	12,271,000	100.0	7,771,000	100.0	16,744,000	100.0
	1922	13,148,000	100.0	8,363,000	100.0	14,170,000	100.0
	1923	13,883,000	100.0	8,824,000	100.0	14,938,000	100.0
	1924	14,400,000	100.0	9,466,000	100.0	15,582,000	100.0
	1925	14,706,000	100.0	10,099,000	100.0	15,564,000	100.0
	1926	14,971,000	100.0	9,542,000	100.0	16,781,000	100.0
	1927	14,000,000	100.0	9,080,000	100.0	16,655,000	100.0
	1928	12,452,000	100.0	8,667,000	100.0	17,401,000	100.0
	1929	12,241,000	100.0	8,313,000	100.0	18,125,000	100.0
Slaughter of Armour & Co., including that of Morris & Co.	1920	2,581,389	18.6	1,006,807	12.0	3,193,238	22.3
	1921	2,202,354	17.9	947,910	12.2	3,654,024	21.8
	1922	2,574,017	19.6	1,032,026	12.3	2,911,420	20.5
	1923	2,713,754	19.5	1,105,783	12.5	3,123,866	20.9
	1924	2,752,531	19.1	1,180,160	12.5	3,215,771	20.7
	1925	2,846,597	19.4	1,254,104	12.4	3,314,026	21.3
	1926	2,845,671	19.0	1,171,209	12.3	3,560,508	21.2
	1927	2,615,390	18.7	1,136,905	12.6	3,518,640	21.1
	1928	2,280,503	18.3	1,145,973	13.2	3,801,516	21.8
	1929	2,248,033	18.4	1,105,029	13.3	4,041,224	22.3
Slaughter of Cudahy Co.	1920	690,049	5.0	201,495	2.4	1,048,806	7.3
	1921	593,132	4.8	132,540	1.7	1,114,306	6.7
	1922	680,799	5.2	150,444	1.8	1,056,144	7.5
	1923	737,148	5.3	228,549	2.6	1,218,250	8.1
	1924	818,769	5.7	267,978	2.8	1,302,573	8.0
	1925	846,529	5.8	306,498	3.0	1,304,037	8.4
	1926	852,112	5.7	371,218	3.9	1,485,671	8.7
	1927	787,663	5.6	359,003	4.0	1,480,598	8.9
	1928	713,231	5.7	342,516	4.0	1,566,330	9.1
	1929	702,902	5.7	330,226	4.0	1,628,774	9.0
Slaughter of Swift & Co.	1920	2,052,607	14.8	1,264,806	15.0	3,311,016	23.2
	1921	1,782,257	14.5	1,168,082	15.0	3,912,606	23.4
	1922	2,084,299	15.9	1,266,401	15.1	3,258,210	23.0
	1923	2,242,445	16.2	1,418,312	16.1	3,676,315	24.6
	1924	2,468,904	17.1	1,591,970	16.8	3,932,113	25.2
	1925	2,583,576	17.6	1,780,987	17.6	4,060,903	26.3
	1926	2,579,923	17.2	1,592,135	16.7	4,662,680	27.8
	1927	2,431,270	17.4	1,552,101	17.2	4,648,953	27.9
	1928	2,185,465	17.6	1,545,035	17.8	4,976,682	28.6
	1929	2,147,306	17.5	1,497,627	18.0	5,1 1,207	28.4
Slaughter of Wilson & Co.	1920	830,415	6.0	287,199	2.8	1,027,534	7.0
	1921	696,387	5.7	221,958	2.9	1,102,131	6.6
	1922	822,665	6.3	261,963	3.1	923,376	6.5
	1923	870,360	6.3	261,481	3.0	920,062	6.2
	1924	890,528	6.2	266,460	2.8	834,455	5.4
	1925	961,601	6.5	319,303	3.2	927,681	6.0
	1926	913,261	6.1	316,087	3.3	1,066,226	6.5
	1927	836,536	5.9	289,116	3.2	1,015,306	6.1
	1928	709,804	5.7	279,850	3.2	1,057,347	6.1
	1929	682,540	5.6	275,289	3.3	1,105,683	6.1

Compiled by the Livest
United States Depart

PETITIONER'S EXHIBIT 10—October 8, 1920

oats) and Hogs Slaughtered and Total Output of Meat and Lard for the United States and for Each of the Four Principal Packers (Including Their Subsidiaries), and the Proportion of Animals Slaughtered and of Meat and Lard Produced by Each of the Four Packers Annually, 1920-1929.

	Cattle		Calves		Sheep, lambs & goats		Swine		Total meat and lard produced from animals slaughtered	
Year	No. of head	Per cent of U. S. total	No. of head	Per cent of U. S. total	No. of head	Per cent of U. S. total	No. of head	Per cent of U. S. total	No. of pounds 000,000 omitted	Per cent of U. S. total
1920	13,885,000	100.0	3,455,000	100.0	4,300,000	100.0	61,890,000	100.0	17,567	100.0
1921	12,271,000	100.0	7,771,000	100.0	16,744,000	100.0	62,957,000	100.0	17,296	100.0
1922	13,148,000	100.0	8,363,000	100.0	14,170,000	100.0	68,105,000	100.0	18,652	100.0
1923	13,883,000	100.0	8,824,000	100.0	14,938,000	100.0	79,843,000	100.0	20,695	100.0
1924	14,400,000	100.0	9,466,000	100.0	15,533,000	100.0	79,631,000	100.0	20,613	100.0
1925	14,706,000	100.0	10,099,000	100.0	15,564,000	100.0	68,294,000	100.0	19,228	100.0
1926	14,971,000	100.0	9,542,000	100.0	16,781,000	100.0	65,779,000	100.0	19,569	100.0
1927	14,000,000	100.0	9,030,000	100.0	16,635,000	100.0	69,250,000	100.0	19,228	100.0
1928	12,452,000	100.0	8,667,000	100.0	17,401,000	100.0	76,593,000	100.0	19,549	100.0
1929	12,241,000	100.0	8,313,000	100.0	18,125,000	100.0	74,945,000	100.0	19,401	100.0
1920	2,581,369	18.6	1,006,807	12.0	3,193,238	22.3	8,072,205	13.0	2,768	15.8
1921	2,202,354	17.9	947,910	12.2	3,654,024	21.8	7,683,157	12.2	2,615	15.1
1922	2,574,013	19.6	1,032,026	12.3	2,911,420	20.5	8,726,742	12.8	2,927	15.7
1923	2,713,754	19.5	1,105,783	12.5	3,123,866	20.9	11,123,285	13.9	3,350	16.2
1924	2,752,531	19.1	1,180,160	12.5	3,215,771	20.7	10,214,621	12.8	3,166	15.4
1925	2,846,597	19.4	1,254,104	12.4	3,314,026	21.3	8,109,767	11.9	2,942	15.3
1926	2,845,671	19.0	1,171,209	12.3	3,560,508	21.2	7,390,850	11.2	2,921	14.9
1927	2,615,390	18.7	1,136,905	12.6	3,518,649	21.1	7,393,357	10.7	2,761	14.4
1928	2,280,503	18.3	1,145,973	13.2	3,801,516	21.8	8,313,758	10.9	2,714	13.9
1929	2,248,033	18.4	1,105,029	13.3	4,041,224	22.3	8,295,675	11.1	2,737	14.1
1920	690,049	5.0	201,495	2.4	1,048,806	7.3	1,880,899	3.0	698	4.0
1921	593,132	4.8	132,540	1.7	1,114,306	6.7	1,812,723	2.9	657	3.8
1922	680,799	5.2	150,444	1.8	1,056,144	7.5	2,151,814	3.2	749	4.0
1923	737,148	5.3	228,549	2.6	1,213,350	8.1	2,817,856	3.5	882	4.3
1924	818,769	5.7	267,973	2.8	1,392,572	9.0	2,888,060	3.6	927	4.5
1925	846,829	5.8	306,498	3.0	1,304,037	8.4	2,405,686	3.5	880	4.6
1926	852,112	5.7	371,218	3.9	1,455,671	8.7	2,187,168	3.3	887	4.5
1927	787,663	5.6	359,003	4.0	1,480,588	8.9	2,593,302	3.7	909	4.7
1928	713,231	5.7	342,516	4.0	1,588,339	9.1	3,061,513	4.0	938	4.8
1929	702,902	5.7	330,226	4.0	1,628,774	9.0	2,872,045	3.8	913	4.7
1920	2,052,697	14.8	1,264,806	15.0	3,311,016	23.2	6,745,623	10.9	2,323	13.2
1921	1,782,257	14.5	1,168,082	15.0	3,912,605	23.4	6,366,506	10.1	2,215	12.8
1922	2,084,299	15.9	1,266,401	15.1	3,258,210	23.0	7,188,095	10.6	2,464	13.2
1923	2,242,445	16.2	1,418,812	16.1	3,676,315	24.6	9,455,687	11.8	2,903	14.0
1924	2,468,904	17.1	1,591,970	16.8	3,932,113	25.3	9,222,029	11.6	2,942	14.3
1925	2,583,376	17.6	1,780,937	17.6	4,090,962	26.3	7,698,726	11.3	2,829	14.7
1926	2,579,923	17.2	1,592,135	16.7	4,663,680	27.8	7,448,915	11.3	2,880	14.7
1927	2,431,270	17.4	1,552,101	17.2	4,648,953	27.9	8,361,823	12.1	2,911	15.1
1928	2,185,465	17.6	1,545,035	17.8	4,976,682	28.6	9,574,137	12.5	2,949	15.1
1929	2,147,306	17.5	1,497,627	18.0	5,1 1,207	28.4	9,446,110	12.6	2,950	15.2
1920	830,415	6.0	237,199	2.8	1,007,534	7.0	2,815,880	4.5	916	5.2
1921	696,387	5.7	221,955	2.9	1,103,131	6.6	2,531,221	4.0	833	4.8
1922	822,665	6.3	262,263	3.1	923,376	6.5	2,567,256	3.8	894	4.8
1923	870,360	6.3	263,461	3.0	920,082	6.2	3,312,256	4.1	1,023	4.9
1924	890,823	6.2	260,980	2.8	834,456	5.4	2,917,061	3.7	946	4.6
1925	951,601	6.5	319,303	3.2	927,681	6.0	2,247,792	3.3	894	4.6
1926	913,281	6.1	316,037	3.3	1,086,236	6.5	2,223,062	3.4	911	4.7
1927	826,338	5.9	289,116	3.2	1,018,396	6.1	2,454,478	3.5	881	4.6
1928	709,804	5.7	279,850	3.2	1,057,347	6.1	2,843,897	3.7	873	4.5
1929	682,540	5.6	275,280	3.3	1,105,683	6.1	2,800,250	3.5	833	4.3

Compiled by the Livestock, Meats and Wool Division, Bureau of Agricultural Economics, United States Department of Agriculture.

[fol. 1332] PET. EX. No. 46

Table —.—Financial Results of Operations During 1929 for 832 Packers Subject to the Packers and Stockyards Act, Grouped According to Federally and Non-Federally Inspected Slaughtering and Non-Slaughtering Concerns.

Group	Number of concerns	Average net worth[1]	Net sales	Net gain
Federally inspected slaughterers	215	$801,858,079	$3,559,116,692	$35,996,445
Nonfederally inspected slaughterers	372	53,557,331	289,002,009	3,909,686
Nonslaughterers[2]	245	164,564,688	447,229,982	25,835,501
Total	832	1,019,980,098	4,295,348,683	65,741,632

[1]These figures represent the numerical average of the total net worth of reporting concerns at the beginning and end of their fiscal year.
[2]This group includes concerns which also handle commodities other than meat food products.

[fol. 1333] PET. EX. No. 47

Table—.—Comparison of the Operations of Packers Subject to the Packers and Stockyards Act, 1925–1929

Item	1925, 514 concerns	1926, 580 concerns	1927, 611 concerns	1928, 680 concerns	1929, 832 concerns
Average net worth[1]	$940,268,445	$969,916,117	$970,772,548	$983,705,930	$1,019,980,098
Total income	3,816,528,294	3,758,972,700	3,877,621,354	4,110,095,060	4,308,814,715
Total expenses	3,751,970,047	3,699,943,922	3,839,325,046	4,039,890,813	4,243,073,083
Net gain	64,558,247	59,028,778	38,296,308	70,204,247	65,741,632
Per cent of gain to net worth	6.87	5.96	3.94	7.14	6.45

[1]These figures represent the average of the total net worth of all reporting concerns at the beginning and end of their fiscal years.

Receipts of Livestock as Reported to Bureau of Animal Industry, Dept. of Agriculture, by Stockyards Posted Under the Packers & Stockyards Act, 1921, Year 1929

Stockyard	Location	Total receipts					
		Cattle	Calves	Hogs	Sheep & goats	Horses & mules	Total head
1. N. Y. Central Stock Yards	Albany, N. Y.	5,629	801	166	476	30	7,102
2. Western Stock Yards	Amarillo, Tex.	114,078	.....	155,866	222,599	8,073	500,616
3. New Orleans Stock Yards	Arabi, La.	70,673	39,945	53,807	2,204	677	217,306
4. National Stock Yards	Atlanta, Ga.	19,800	.....	36,844	60	26,089	82,793
5. Augusta Stock Yards	Augusta, Ga.	1,580	240	3,660	22	.....	5,502
6. Union Stock Yards	Baltimore, Md.	136,864	58,379	1,093,031	410,425	709	1,699,408
7. Union Stock Yards	Benning, D. C.	10,057	9,271	148,169	9,163	30	176,690
8. Union Stock Yards	Birmingham, Ala.	No report					
9. Brighton Stock Yards	Brighton, Mass.	39,054	74,880	26,562	8,525	42	149,063
10. Buffalo Stock Yards	Buffalo, N. Y.	189,587	300,404	900,275	925,785	10,055	2,326,106
11. Foust-Yarnell Stock Yards	Chattanooga, Tenn.	15,649	.....	29,518	3,180	.....	48,347
12. Union Stock Yards	Chicago, Ill.	2,388,422	672,073	8,102,951	3,784,865	18,826	15,057,135
13. Cincinnati Union Stock Yards	Cincinnati, O.	233,283	124,164	1,388,253	216,461	1,133	1,963,294
14. Union Stock Yards	Cleveland, O.	125,441	136,974	835,345	436,573	.....	1,534,333
15. Union Stock Yards	Dayton, O.	20,552	8,351	122,017	8,888	153	159,961
16. Union Stock Yards	Denver, Colo.	555,579	68,479	538,524	2,290,395	22,451	3,475,428
17. Detroit Stock Yards	Detroit, Mich.	134,673	169,983	409,848	532,999	390	1,247,893
18. Union Stock Yards	El Paso, Tex.	126,833	17,063	43,982	178,045	1,834	367,777
19. McElroy Stock Yards	E. Paso, Tex.	31,460	15,275	2,346	9,765	.....	58,846
20. Evansville, Union Stock Yards	Evansville, Ind.	33,747	37,951	227,231	29,969	91	328,989
21. Fort Wayne Union Stock Yards	Fort Wayne, Ind.	14,200	13,877	105,436	26,643	.....	160,156
22. Fort Worth Stock Yards	Fort Worth, Tex.	101,798	327,334	401,740	539,687	42,304	2,072,863
23. Galesburg Horse & Mule Market	Galesburg, Ill.	.....	.....	.....	.....	9,875	9,875
24. Bradstreet & Clemens Stockyards	Grand Island, Nebr.	39,196	8,948	14,380	1,501	11,151	75,176
25. Union Stock Yards	Indianapolis, Ind.	255,169	173,564	2,145,407	269,728	2,090	2,845,958
26. National Stock Yards	Jacksonville, Fla.	8,981	1,380	40,227	468	1,989	53,045
27. Jersey City Stock Yards	Jersey City, N. J.	227,432	412,298	115,365	1,536,789	1,946	2,293,830
28. Kansas City Stock Yards	Kansas City, Mo.	1,835,792	341,959	2,476,307	1,752,882	52,400	6,459,340

29.	Union Stock Yards	Knoxville, Tenn	16,292	3,478	34,015	2,146	119	56,050
30.	Union Stock Yards	La Fayette, Ind	6,366	7,418	131,577	7,653	.....	153,014
31.	Union Stock Yards	Lancaster, Pa	180,090	31,092	86,340	23,539	362	321,423
32.	Union Stock Yards	Los Angeles, Calif	202,481	61,847	217,449	69,828	339	551,944
33.	Bourbon Stock Yards	Louisville, Ky	123,697	104,997	352,196	163,781	615	745,286
34.	Darnell Stockyards	Memphis, Tenn	No report					
35.	Dixie National Stock Yards	Memphis, Tenn	9,038	2,778	2,912	435	29	15,192
36.	Memphis Union Stock Yards	Memphis, Tenn	5,937	142	882	161	27,897	35,019
37.	So. Memphis Stock Yards	Memphis, Tenn	29,945	26,429	77,675	529	.....	134,578
38.	Meridian Union Stock Yards	Meridian, Miss	6,174	710	364	20	13	7,281
39.	Milwaukee Stock Yards	Milwaukee, Wis	136,716	437,143	599,506	73,330	3,616	1,250,311
40.	Union Stock Yards	Montgomery, Ala	71,932	41,934	48,755	6,635	8,136	177,402

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41.	Southern Stock Yards	Moultrie, Ga	11,664	.....	78,371	.....	.....	90,035
42.	Muncie National Stock Yards	Muncie, Ind	7,329	12,895	147,774	31,496	.....	199,494
43.	Union Stock Yards	Nashville, Tenn	48,003	39,685	175,504	155,269	112	418,573
44.	St. Louis National Stock Yards	National Stock Yards, Ill	951,097	422,591	4,597,244	654,852	91,101	6,716,885
45.	Newark Stock Yards	Kearney, N. J	20,447	14,350	477,737	77,312	.....	589,846
46.	41st Street Stock Yards	New York City, N. Y	25,797	66,639	5,158	12,901	178	110,673
47.	Union Stock Yards	Ogden, Utah	124,321	9,626	262,727	1,775,125	3,553	2,175,352
48.	Oklahoma National Stock Yards	Oklahoma City, Okla	253,012	121,552	460,280	25,262	6,798	866,904
49.	Union Stock Yards	So. Omaha, Nebr	1,444,210	102,223	3,165,793	3,030,619	20,991	7,763,836
50.	Pasco Union Stock Yards	Pasco, Wash	2,568	28	12,182	73,363	2,149	90,290
51.	Union Stock Yards	Peoria, Ill	39,650	43,835	765,627	14,861	353	864,326
52.	West Philadelphia Stock Yards	Philadelphia, Pa	49,508	108,488	294,812	279,226	1,548	733,582
53.	Union Stock Yards	Pittsburgh, Pa	280,482	295,510	1,852,876	989,241	12,859	3,430,968
54.	Portland Union Stock Yards	No. Portland, Ore	118,830	13,268	260,755	141,233	1,183	544,269
55.	Richmond Union Stock Yards	Richmond, Va	15,620	11,244	255,191	11,875	51	293,981
56.	Salt Lake Union Stock Yards	No. Salt Lake, Utah	64,168	.....	319,112	629,742	981	1,014,003
57.	Union Stock Yards	San Antonio, Tex	88,781	62,878	86,236	49,002	3,577	290,474
58.	So. San Francisco Un. Stkyds	So. San Francisco, Calif	72,580	6,070	259,029	236,212	3	573,894
59.	Union Stock Yards	Seattle, Wash	34,629	3,444	172,324	60,560	1,289	272,246
60.	Sioux City Stock Yards	Sioux City, Ia	777,776	61,469	2,313,212	840,492	17,493	4,010,442
61.	Sioux Falls Stock Yards	Sioux Falls, S. D	67,396	11,803	464,928	7,636	700	552,463
62.	Spokane Union Stockyards	Spokane, Wash	26,786	3,923	64,778	29,220	1,242	125,949

PET. EX. No. 48—Continued

Stockyard	Location	Total receipts					
		Cattle	Calves	Hogs	Sheep & Goats	Horses & mules	Total head
63. Stockmen's Union Yards	Spokane, Wash	17,838	2,551	50,534	5,721	159	76,803
64. Springfield Stock Yards	Springfield, Ill	2,662	5,583	159,333	2,491	.....	170,009
65. Springfield Stockyards	Springfield, Mo	13,289	29,448	124,942	14,530	2,870	184,979
66. Union Stock Yards	Springfield, Mo	Posted Dec. 3, 1929					
67. Stockton Feed Yards	Stockton, Calif	12,790	.....	13,007	55,753	858	82,408
68. St. Joseph Stock Yards	So. St. Joseph, Mo	500,390	89,274	1,626,641	1,635,607	7,426	3,859,338
69. St. Paul Union Stockyards	So. St. Paul, Minn	878,509	546,459	2,868,883	1,139,073	17,768	5,450,692
70. Interstate Stock Yards	Toledo, O	8,609	819	24,688	4,778	.....	38,894
71. Toledo Union Stock Yards	Toledo, O	8,377	4,357	73,784	8,056	.....	94,574
72. Wichita Union Stock Yards	Wichita, Kans	239,799	91,221	832,637	140,424	17,997	1,322,078
73. Guyton Stock Yards	Memphis, Tenn	Posted June 25, 1930					
74. Bushnell Stock Yards	Bushnell, Ill	Posted Aug. 1, 1930					
Grand Total		14,301,054	5,962,814	43,334,037	25,678,084	466,603	89,832,592

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Crops and Markets

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[fol. 1345]

Receipts and Disposition of Livestock at Public Stockyards for 1928 and 1929

(65 Markets)

Cattle (excluding calves)

Markets	Receipts		Local slaughter		Stocker and feeder shipments		Total shipments		Receipts		Local slau
	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928
Amarillo, Tex	173,377	114,078	.....	.....	145,416	82,798	173,437	114,077	(1)	(1)	.....
Atlanta, Ga	67,685	46,033	26,012	19,996	.....	.....	41,468	26,309	14,006	6,970	5,880
Augusta, Ga	6,828	2,374	6,828	2,374	.....	.....	.....	.....	1,070	508	1,070
Baltimore, Md	142,241	136,864	87,639	88,986	5,267	4,614	54,602	47,878	55,522	58,379	37,110
Boston, Mass	43,263	40,051	(2)	(2)	(2)	(2)	(2)	(2)	69,647	76,272	(2)
Buffalo, N. Y	227,296	192,137	127,957	111,285	2,306	2,037	98,774	81,431	317,796	298,005	57,326
Chattanooga, Tenn	14,437	15,649	11,452	10,860	2,985	4,789	2,985	4,789	.....	.....	.....
Cheyenne, Wyo	16,358	10,946	.....	.....	.....	.....	16,358	10,946	.....	281	.....
Chicago, Ill	2,505,256	2,388,422	1,769,291	1,659,001	164,293	165,539	735,965	729,421	761,611	672,073	734,895
Cincinnati, Ohio	231,289	190,361	165,567	137,447	18,016	12,659	65,722	52,914	133,734	107,442	73,884
Cleveland, Ohio	96,575	103,629	93,637	101,003	300	470	2,938	2,626	113,824	122,859	109,051
Dallas, Tex	11,569	18,737	11,552	18,699	.....	.....	1	.....	7,338	19,916	7,333
Dayton, Ohio	20,818	20,579	17,181	16,447	.....	.....	3,637	4,132	8,868	8,330	7,836
Denver, Colo	590,382	555,588	130,744	131,489	347,809	306,930	458,563	424,521	76,819	68,479	29,024
Detroit, Mich	130,935	134,825	115,775	121,836	3,415	2,723	15,160	13,289	166,878	169,983	128,868
East St. Louis, Ill	899,516	831,691	275,872	306,888	82,743	88,300	623,644	524,803	415,100	391,460	118,586
El Paso, Tex	196,722	158,293	19,627	21,292	172,949	135,403	176,625	137,727	52,377	32,358	7,271
Evansville, Ind	37,210	31,878	29,756	24,485	5,402	6,110	7,444	7,892	38,821	37,102	37,455
Fort Wayne, Ind	15,066	14,181	9,070	9,424	110	194	5,966	4,751	13,846	13,896	1,711
Fort Worth, Tex	885,902	761,798	381,441	312,857	253,849	219,154	322,269	311,924	325,217	327,334	344,987
Indianapolis, Ind	250,266	255,169	195,296	194,910	27,407	23,715	55,395	59,863	188,235	173,564	63,681
Jacksonville, Fla	40,111	8,981	14,318	6,414	10,201	749	26,211	2,673	4,008	1,380	2,840
Jersey City, N. J	225,019	227,432	225,019	227,432	.....	.....	.....	.....	416,190	412,298	416,190
Kansas City, Mo	1,858,990	1,835,792	816,126	840,289	700,306	654,104	1,058,451	1,010,293	351,096	341,959	213,259
Knoxville, Tenn	16,300	16,271	13,716	12,758	2,205	3,513	2,529	3,513	1,710	3,499	1,680
LaFayette, Ind	6,340	6,194	4,359	3,035	544	1,210	1,987	3,131	6,853	7,364	2,154
Lancaster, Pa	203,318	180,074	77,862	84,788	72,396	63,502	125,456	95,286	27,153	31,105	9,085
Laredo, Tex	9,438	5,050	3,259	3,284	631	105	6,179	1,766	2,760	1,609	618
Los Angeles, Calif	189,759	202,481	177,820	191,907	11,862	10,774	11,862	10,774	56,715	61,847	53,715
Louisville, Ky	133,878	115,409	63,346	62,560	19,348	15,041	70,532	52,849	113,410	103,816	28,885
Marion, Ohio	884	696	9	76	174	122	873	622	1,962	1,549	122
Memphis, Tenn	60,831	44,947	25,186	21,964	10,434	9,807	37,419	24,076	27,233	29,327	23,596
Milwaukee, Wis	151,226	137,639	127,026	123,691	4,199	4,537	24,195	13,943	420,746	443,138	416,535
Montgomery, Ala	89,428	71,931	6,034	6,604	19,236	17,221	83,427	65,271	44,300	41,934	2,175
Moultrie, Ga	13,381	10,876	8,326	4,853	3,068	3,346	5,043	6,142	.....	.....	.....
Muncie, Ind	6,977	7,329	4,585	5,346	448	386	2,392	1,983	10,391	12,895	1,062
Nashville, Tenn	49,334	48,303	36,502	32,871	3,169	2,860	12,832	15,432	41,948	39,685	17,857
Newark, N. J	20,137	20,467	18,173	18,091	2,049	2,328	2,049	2,337	15,024	14,350	15,024
New Orleans, La	73,653	59,050	40,812	32,532	22,610	14,629	32,962	26,541	96,622	81,180	86,668
New York, N. Y	45,496	27,472	45,291	27,408	.....	.....	205	64	226,752	221,581	226,752
North Salt Lake, Utah	49,286	62,318	11,121	12,208	6,370	13,278	38,327	50,000	767	1,850	767
Ogden, Utah	140,414	122,485	9,549	8,877	58,213	52,186	130,865	113,608	8,648	9,469	1,476
Oklahoma City, Okla	262,563	253,012	163,170	162,977	52,141	43,086	99,240	89,640	100,303	121,552	81,882
Omaha, Nebr	1,423,258	1,444,210	847,825	856,173	355,051	371,447	578,115	588,214	94,496	102,223	58,563
Pasco, Wash	6,276	2,568	.....	.....	.....	.....	6,351	2,888	414	28	3
Peoria, Ill	34,205	36,834	11,494	10,538	4,698	5,488	22,764	26,274	41,841	41,945	7,251
Philadelphia, Pa	66,382	49,253	63,182	47,953	.....	.....	3,200	1,300	89,688	88,094	88,948
Pittsburgh, Pa	344,867	304,380	62,016	60,570	.....	.....	282,851	243,810	345,743	318,811	74,581
Portland, Oreg	116,708	118,830	70,986	67,578	6,144	9,277	45,764	51,253	12,843	13,268	10,720
Pueblo, Colo	126,005	95,014	569	580	55,261	34,505	125,223	94,453	15,942	8,776	302
[illegible], Va	17,358	15,620	10,867	10,842	2,008	1,742	6,401	4,778	11,648	11,944	2,457

Receipts and Disposition of Livestock at Public Stockyards for 1928 and 1929

(65 Markets)

Cattle (exluding calves)						Calves							
Local slaughter		Stocker and feeder shipments		Total shipments		Receipts		Local slaughter		Stocker and feeder shipments		Total shipments	
1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929
.....	.....	145,416	82,798	173,437	114,077	(1)	(1)	.....	.....	(1)	(1)	(1)	(1)
26,012	19,996	.....	.....	41,468	26,309	14,006	6,970	5,580	2,584	.....	.....	8,211	5,019
6,828	2,374	.....	.....	.....	.....	1,070	508	1,070	508	.....	.....	.....	.....
87,639	88,986	5,267	4,614	54,602	47,878	55,522	58,379	37,110	38,906	.....	.....	18,412	19,473
(2)	(2)	(2)	(2)	(2)	(2)	69,047	76,272	(2)	(2)	(2)	(2)	(2)	(2)
127,957	111,285	2,306	2,037	98,774	81,431	317,796	298,005	57,326	60,086	.....	.....	260,522	237,801
11,452	10,860	2,985	4,789	2,985	4,789	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	16,358	10,946	.....	281	.....	.....	.....	.....	.....	281
1,769,291	1,659,001	164,293	165,539	735,965	729,421	761,611	672,073	734,895	643,577	.....	68	26,716	28,496
165,567	137,447	18,016	12,659	65,722	52,914	133,734	107,442	73,884	65,218	.....	150	59,850	42,224
93,637	101,003	300	470	2,938	2,626	113,824	122,859	109,051	119,567	.....	70	4,773	3,292
11,552	18,699	.....	.....	1	.....	7,338	19,916	7,333	19,841	.....	.....	4	.....
17,181	16,447	.....	.....	3,637	4,132	8,868	8,330	7,836	7,713	.....	.....	1,032	617
130,744	131,489	347,809	306,930	458,563	424,521	76,819	68,479	29,024	27,330	44,099	37,743	46,750	41,968
115,775	121,536	3,415	2,723	15,160	13,289	166,878	169,983	128,868	126,961	6	.....	38,010	43,022
275,872	306,888	82,743	88,300	623,644	524,803	415,100	391,460	118,586	131,282	820	481	296,514	260,178
19,627	21,292	172,949	135,403	176,625	137,727	52,877	32,358	7,271	6,844	44,255	22,706	45,106	25,511
29,756	24,485	5,402	6,110	7,444	7,392	38,821	37,102	37,455	35,717	1,344	1,378	1,369	1,385
9,070	9,424	110	194	5,966	4,751	13,846	13,896	1,711	1,901	257	69	12,143	11,867
381,441	312,857	253,849	219,154	322,269	311,924	325,217	327,334	344,987	276,547	64,539	54,179	147,975	187,907
195,296	194,910	27,407	23,715	55,395	59,863	188,235	173,564	63,681	59,429	.....	.....	124,554	114,135
14,318	6,414	10,201	749	26,211	2,673	4,008	1,380	2,840	1,234	1,172	146	1,433	147
225,019	227,432	.....	.....	.....	.....	416,190	412,298	416,190	412,298	.....	.....	.....	.....
816,126	840,289	700,306	654,104	1,058,451	1,010,293	351,096	341,959	213,259	206,510	79,401	75,376	96,936	98,095
13,716	12,758	2,205	3,513	2,529	3,513	1,710	3,499	1,680	3,478	30	21	30	21
4,359	3,035	544	1,210	1,987	3,101	6,853	7,364	2,154	1,413	145	389	4,685	5,967
77,862	84,788	72,396	63,502	125,456	95,286	27,153	31,105	9,085	15,617	.....	.....	18,068	15,488
3,259	3,284	631	105	6,179	1,766	2,760	1,609	618	489	1,234	285	2,142	1,120
177,820	191,907	11,862	10,774	11,862	10,774	56,715	61,847	53,715	59,818	2,693	1,933	2,693	1,933
63,346	62,560	19,348	15,041	70,532	52,849	113,410	103,816	28,885	27,347	.....	.....	84,525	76,469
9	76	174	122	873	622	1,962	1,549	122	253	19	18	1,839	1,294
25,186	21,964	10,434	9,807	37,419	24,076	27,233	29,327	23,596	26,938	627	772	1,990	1,276
127,026	123,691	4,199	4,537	24,195	13,943	420,746	443,138	416,535	438,950	3,882	3,642	4,191	4,187
6,034	6,604	19,236	17,221	83,427	65,271	44,300	41,934	2,175	1,842	474	301	42,125	40,240
8,326	4,853	3,068	3,346	5,043	6,142	.....	.....	.....	.....	.....	.....	.....	.....
4,585	5,346	448	386	2,392	1,983	10,391	12,895	1,062	368	225	84	9,329	12,527
36,502	32,871	3,169	2,860	12,832	15,432	41,948	39,685	17,857	14,143	.....	.....	24,091	25,542
18,173	18,091	2,049	2,328	2,049	2,837	15,024	14,350	15,024	14,350	.....	.....	.....	.....
40,812	32,532	22,610	14,629	32,962	26,541	96,622	81,180	86,668	73,247	8,942	3,244	10,091	8,010
45,291	27,408	.....	.....	205	64	226,752	221,581	226,752	221,546	.....	.....	.....	35
11,121	12,208	6,370	13,278	38,327	50,000	767	1,850	767	1,850	.....	.....	.....	.....
9,549	8,877	58,213	52,186	130,865	113,608	8,648	9,469	1,476	1,780	2,960	3,226	7,172	7,689
163,170	162,977	52,141	43,086	99,240	89,640	100,303	121,552	81,882	97,011	7,556	13,051	18,384	24,273
847,825	856,173	355,051	371,447	578,115	588,214	94,496	102,223	58,563	58,429	29,142	43,034	36,030	43,771
.....	.....	.....	.....	6,351	2,888	414	28	3	.....	.....	.....	409	30
11,494	10,538	4,698	5,488	22,764	26,274	41,841	41,945	7,251	7,766	2,156	479	34,534	34,235
63,182	47,953	.....	.....	3,200	1,300	89,688	88,094	88,948	86,763	.....	.....	740	1,331
62,016	60,570	.....	.....	282,851	243,810	345,743	318,811	74,581	74,023	.....	.....	271,162	244,788
70,986	67,578	6,144	9,277	45,764	51,253	12,843	13,268	10,720	10,192	.....	.....	2,423	3,074
569	580	55,261	34,505	125,223	94,453	15,942	8,776	302	127	10,976	4,474	15,636	8,649

Richmond, Va.	17,358	15,620	10,867	10,842	2,008	1,743	6,491	4,778	11,648	11,244	8,457	8,394
St. Joseph, Mo.	511,036	500,390	336,028	321,765	105,888	92,382	174,317	178,539	86,784	89,274	72,612	69,166
San Antonio, Tex.	94,635	88,703	38,165	27,175	36,794	40,159	56,446	61,606	51,939	62,878	32,545	31,189
Seattle, Wash.	42,712	42,360	41,211	40,397	.....	.....	1,501	1,963	3,452	3,717	33,396	3,665
Sioux City, Iowa	750,133	777,776	377,751	396,132	249,704	261,046	371,628	381,332	62,609	61,469	24,984	23,388
Sioux Falls, S. Dak.	46,985	67,380	22,054	30,450	22,893	29,524	24,865	37,049	9,040	11,734	1,013	1,064
South St. Paul, Minn	917,362	878,509	495,114	455,927	290,929	273,012	413,614	413,978	572,553	546,459	566,681	542,039
S. San Francisco, Calif.	70,540	72,580	41,992	39,103	431	290	28,540	33,484	8,118	6,070	5,873	2,997
Spokane, Wash.	38,459	26,786	23,841	14,935	8,122	4,474	14,632	11,698	5,385	3,923	3,765	2,340
Springfield, Ill.	2,171	2,602	783	911	39	74	1,393	1,656	4,849	5,583	1,831	1,503
Springfield, Mo.	15,914	13,075	4,663	1,406	3,399	2,324	11,251	11,669	31,304	28,849	6,522	816
Springfield, Ohio	1,377	1,011	636	369	.....	.....	759	639	3,842	3,817	1,879	1,062
Toledo, Ohio	14,583	15,771	6,202	7,766	7,107	6,833	8,423	8,045	5,022	5,087	4,328	4,800
Washington, D. C.	12,745	10,125	12,695	10,125	50	.....	50	.....	11,594	9,271	11,594	9,271
Wichita, Kans.	315,667	239,799	88,580	78,688	181,932	148,806	227,087	175,393	78,474	91,221	27,878	23,209
Discontinued	9,542	2,699	2,205	1,291	96	11	7,328	1,403	6,429	3,894	2,125	1,596
Total	15,188,674	14,293,767	7,925,165	7,659,618	3,562,407	3,249,614	7,046,612	6,480,161	6,289,309	6,086,233	4,383,861	4,208,292
Increase or decrease	.....	—894,907	.....	—265,547	.....	—312,793	.....	—566,451	.....	—203,076	.....	—175,569
Percentage	.....	—5.9	.....	—3.4	.....	—8.8	.....	—8.0	.....	—3.2	.....	—4.0
5-year average, 1924–1928	.....	16,554,221	.....	8,941,270	.....	3,537,132	.....	7,375,090	.....	6,620,749	.....	4,744,544
Increase or decrease	.....	—2,260,454	.....	—1,281,652	.....	—287,518	.....	—894,929	.....	—534,516	.....	—536,252
Percentage	.....	—13.7	.....	—14.3	.....	—8.1	.....	—12.1	.....	—8.1	.....	—11.3

[1] Calves included with cattle.
[2] Disposition of stock not reported.
NOTE.—This report represents the total livestock movement at the specified stockyards including through shipments. Direct shipments to packers are included only when such shipme

0,867	10,842	2,008	1,743	6,491	4,778	11,648	11,244	8,457	8,394	.....	.....	3,191	2,850
6,028	321,765	105,888	92,382	174,317	178,539	86,784	89,274	72,612	69,166	10,488	16,516	14,370	20,091
8,165	27,175	36,794	40,159	56,446	61,606	51,939	62,878	32,545	31,189	11,468	19,054	19,397	31,689
1,211	40,397	.....	.....	1,501	1,963	3,452	3,717	33,396	3,665	.....	.....	56	52
7,751	396,132	249,704	261,046	371,628	381,332	62,609	61,469	24,984	23,388	34,764	34,054	37,606	38,010
2,054	30,450	22,893	29,524	24,865	37,049	9,040	11,734	1,013	1,064	7,797	10,001	8,065	10,702
5,114	455,927	290,929	273,012	413,614	413,978	572,553	546,459	566,681	542,039	7,010	11,488	9,706	15,063
1,992	39,103	431	290	28,540	33,484	8,118	6,070	5,873	2,997	.....	1	2,245	3,073
3,841	14,935	8,122	4,474	14,632	11,698	5,385	3,923	3,765	2,340	754	925	1,606	1,601
783	911	39	74	1,393	1,656	4,849	5,583	1,831	1,503	62	100	3,021	4,047
4,663	1,406	3,399	2,324	11,251	11,669	31,304	28,849	6,522	816	1,375	999	24,782	28,033
636	369	.....	.....	759	639	3,842	3,817	1,879	1,062	.....	.....	1,964	2,764
6,202	7,766	7,107	6,833	8,423	8,045	5,022	5,087	4,328	4,800	.....	.....	705	285
2,695	10,125	50	.....	50	.....	11,594	9,271	11,594	9,271	.....	.....	.....	.....
8,580	78,688	181,932	148,806	227,087	175,393	78,474	91,221	27,878	23,209	22,553	40,630	50,587	55,203
2,205	1,291	96	11	7,328	1,403	6,429	3,894	2,125	1,596	.....	.....	4,308	2,298
5,165	7,659,618	3,562,407	3,249,614	7,046,612	6,480,161	6,289,309	6,086,233	4,383,861	4,208,292	403,225	401,187	1,963,908	1,899,128
.....	—265,547	.....	—312,793	.....	—566,451	.....	—203,076	.....	—175,569	.....	—2,038	.....	—64,780
.....	—3.4	.....	—8.8	.....	—8.0	.....	—3.2	.....	—4.0	.....	—0.5	.....	—3.3
.....	8,941,270	.....	3,537,132	.....	7,375,090	.....	6,620,749	.....	4,744,544	.....	281,635	.....	1,968,162
.....	—1,281,652	.....	—287,518	.....	—894,929	.....	—534,516	.....	—536,252	.....	119,552	.....	—69,034
.....	—14.3	.....	—8.1	.....	—12.1	.....	—8.1	.....	—11.3	.....	42.4	.....	—3.5

ement at the specified stockyards including through shipments. Direct shipments to packers are included only when such shipments pass through the stockyards.

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Receipts and Disposition of Livestock at Public Stockyards for 1928 and 1929—Continued
[65 Markets]

Markets	Hogs								Sheep			
	Receipts		Local slaughter		Stocker and feeder shipments		Total shipments		Receipts		Local slaughter	
	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929
Amarillo, Tex	84,027	155,866	.....	.....	.....	.....	84,027	155,866	114,713	222,599	.....	.....
Atlanta, Ga	111,562	44,943	77,930	15,890	.....	.....	33,605	29,108	3,106	582	901	4
Augusta, Ga	4,612	2,729	4,612	2,729	.....	.....	.....	.....	.....	.....	.....	.....
Baltimore, Md	1,199,208	1,093,031	1,023,757	938,166	.....	.....	175,451	154,865	373,611	410,425	107,557	112,3
Boston, Mass	19,033	26,730	(1)	(1)	(1)	(1)	(1)	(1)	7,641	8,580	(1)	(1)
Buffalo, N. Y	1,025,769	853,982	490,006	392,666	406	81	534,433	462,404	994,057	978,404	154,030	164,6
Chattanooga	27,087	29,518	27,087	29,518	.....	.....	.....	.....	1,122	3,180	948	1,7
Cheyenne, Wyo	180,800	115,771	.....	.....	.....	.....	180,800	115,771	104,460	54,536	.....	.....
Chicago, Ill	8,539,405	8,192,951	6,394,409	6,361,707	979	396	2,144,996	1,831,244	3,867,882	3,784,863	2,740,157	2,667,1
Cincinnati	1,567,309	855,764	1,040,187	527,350	.....	6	527,122	328,414	210,839	183,339	65,869	63,2
Cleveland	753,716	621,527	565,039	438,263	.....	.....	188,677	183,264	416,188	407,188	217,497	203,3
Dallas, Tex	66,269	83,327	65,619	83,552	.....	.....	184	.....	1,521	5,817	1,498	5,8
Dayton, Ohio	129,485	121,316	84,974	81,624	.....	.....	44,511	39,692	9,986	8,888	5,847	7,0
Denver, Colo	567,227	538,524	462,971	418,063	16,309	18,300	100,839	121,211	2,295,034	2,290,395	213,661	239,6
Detroit, Mich	471,537	409,850	305,649	294,395	1	.....	165,888	115,455	451,450	533,192	265,214	273,0
East St. Louis	4,036,266	3,865,456	1,050,388	1,098,312	30,408	25,033	2,985,878	2,767,144	510,225	534,370	319,274	332,8
El Paso, Tex	42,760	46,328	38,260	41,405	1,601	721	4,560	4,923	170,329	187,810	10,694	13,7
Evansville, Ind	305,358	226,801	150,491	112,898	11,069	9,851	154,852	113,900	25,118	29,655	23,095	25,1
Fort Wayne	112,373	105,336	23,938	25,269	3,113	4,594	88,330	80,001	25,509	26,645	841	3
Fort Worth	431,635	401,740	392,281	348,476	2,135	6,421	26,732	53,264	457,788	539,687	213,476	281,7
Indianapolis	2,260,804	2,145,407	1,205,795	1,016,585	14,068	8,394	1,055,162	1,128,723	224,694	269,728	82,796	97,2
Jacksonville	38,657	40,227	10,776	14,506	695	386	28,092	25,702	264	468	139	
Jersey City	241,333	115,365	241,333	115,365	.....	.....	.....	.....	1,426,322	1,536,789	1,426,322	1,536,7
Kansas City, Mo	2,391,016	2,476,307	1,706,286	1,454,334	104,841	104,097	674,926	1,011,471	1,767,007	1,752,882	1,270,207	1,290,1
Knoxville	33,753	34,015	33,505	34,015	140	.....	248	.....	881	2,224	881	1,6
La Fayette, Ind	129,895	131,105	57,235	53,775	3,290	1,586	72,486	77,573	6,117	7,653	990	9
Lancaster, Pa	84,084	86,340	52,074	56,180	.....	.....	32,010	30,160	29,093	23,539	4,683	6,4
Laredo, Tex	3,112	4,493	3,108	4,445	.....	.....	4	48	10,635	11,336	6,925	11,0
Los Angeles	299,208	217,449	295,603	214,833	3,140	2,050	3,140	2,059	40,733	69,828	40,066	68,4
Louisville, Ky	400,369	313,660	252,157	224,414	4,005	2,753	148,212	89,246	198,908	162,340	30,410	25,6
Marion, Ohio	49,416	54,328	89	549	2,491	2,020	49,274	53,762	8,299	7,416	50	
Memphis, Tenn	71,553	81,416	51,276	62,409	17,273	14,842	20,165	18,962	3,507	1,125	473	
Milwaukee	502,393	604,088	491,946	585,752	329	259	10,447	18,336	53,973	73,989	44,274	58,6
Montgomery	58,231	48,765	5,682	7,055	1,458	3,487	52,610	41,530	7,364	6,635	106	
Moultrie, Ga	70,206	76,328	52,009	62,612	3,052	4,050	18,095	13,829	.....	.....	.....	.....
Muncie, Ind	125,421	147,774	39,939	41,545	2,502	757	85,499	106,252	17,219	31,496	162	
Nashville	235,033	188,174	60,077	75,660	.....	.....	174,956	112,514	149,680	155,321	18,229	21,4
Newark, N. J	602,907	477,634	603,057	477,162	25	.....	25	.....	66,535	77,309	66,535	77,3
New Orleans	49,055	47,749	37,718	32,813	8,342	4,948	10,728	14,470	2,472	1,726	1,242	
New York	1,202,072	1,233,384	1,202,072	1,233,384	.....	.....	.....	.....	379,010	420,698	379,010	420,6
North Salt Lake, Utah	368,758	319,112	57,426	54,984	.....	100	311,332	264,126	681,413	629,742	13,219	11,9
Ogden, Utah	250,222	274,686	57,325	57,580	2,456	2,455	192,897	217,106	1,525,607	1,759,000	2,555	7,9
Oklahoma City, Okla	441,026	460,280	383,625	388,514	7,531	4,844	57,035	71,614	16,818	25,262	10,383	18,1
Omaha, Nebr	3,179,211	3,165,793	2,169,271	2,276,740	38,711	29,261	1,011,279	888,093	3,037,119	3,030,619	1,740,236	1,698,6
Pasco, Wash	13,848	12,182	.....	.....	.....	.....	13,840	12,159	51,619	73,363	.....	.....
Peoria, Ill	739,240	749,859	132,060	137,571	17,482	13,654	606,996	612,110	19,226	14,182	1,003	1,0
Philadelphia	289,002	285,141	275,166	270,400	.....	.....	13,836	14,741	235,380	256,762	232,262	256,0
Pittsburgh, Pa	2,201,813	2,040,910	519,401	473,551	.....	.....	1,682,412	1,567,359	986,076	1,075,487	108,450	109,8
Portland, Oreg	304,527	269,755	204,815	173,565	19,855	20,075	99,713	96,181	140,028	141,233	80,229	77,9
Pueblo, Colo	19,469	26,005		20		745	19,021	26,494	849,709	709,494		

Receipts and Disposition of Livestock at Public Stockyards for 1928 and 1929—Continued
[65 Markets]

Hogs						Sheep and lambs							
Local slaughter		Stocker and feeder shipments		Total shipments		Receipts		Local slaughter		Stocker and feeder shipments		Total shipments	
1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929	1928	1929
.....	.....	.....	.....	84,027	155,866	114,713	222,599	.....	.....	75,057	177,970	114,713	222,599
77,930	15,890	.....	.....	33,605	29,108	3,106	582	901	449	.....	.....	2,200	133
4,612	2,729	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
023,757	938,166	.....	.....	175,451	154,865	373,611	410,425	107,557	112,364	1,594	1,362	266,054	298,061
(1)	(1)	(1)	(1)	(1)	(1)	7,641	8,580	(1)	(1)	(1)	(1)	(1)	(1)
490,006	392,666	406	81	534,433	462,404	994,057	978,404	154,030	164,697	7,761	9,060	840,840	813,410
27,087	29,518	.....	.....	.....	.....	1,122	3,180	948	1,744	174	1,436	174	1,436
.....	.....	.....	.....	180,800	115,771	104,460	54,536	.....	.....	.....	.....	104,460	54,536
394,409	6,361,707	979	396	2,144,996	1,831,244	3,867,882	3,784,863	2,740,157	2,667,183	436,468	523,676	1,127,725	1,117,680
040,187	527,350	.....	6	527,122	328,414	210,839	183,339	65,869	63,251	5,082	6,923	144,970	120,088
565,039	438,263	.....	.....	188,677	183,264	416,188	407,188	217,497	203,324	3,924	4,464	198,691	203,864
65,619	83,552	.....	.....	184	.....	1,521	5,817	1,498	5,804	.....	.....	22	.....
84,974	81,624	.....	.....	44,511	39,692	9,986	8,888	5,847	7,030	.....	.....	4,139	1,858
462,971	418,063	16,309	18,300	100,839	121,211	2,295,034	2,290,395	213,661	239,605	1,046,840	1,191,550	2,073,933	2,057,126
305,649	294,395	1	.....	165,888	115,455	451,450	533,192	265,214	273,030	16,030	11,644	186,236	260,162
950,388	1,098,312	30,108	25,033	2,985,878	2,767,144	510,225	534,370	319,274	332,877	4,978	5,697	190,951	201,493
38,200	41,405	1,601	721	4,560	4,923	170,329	187,810	10,694	13,780	72,195	71,743	159,578	174,030
150,491	112,898	11,069	9,851	154,852	113,900	25,118	29,655	23,095	25,136	1,410	2,185	2,024	4,518
23,938	25,269	3,113	4,594	88,330	80,001	25,509	26,645	841	355	3,697	3,950	24,608	26,357
392,281	348,476	2,135	6,421	26,732	53,264	457,788	539,687	213,476	281,742	81,139	83,814	237,000	257,947
005,795	1,016,585	14,068	8,394	1,055,162	1,128,723	224,694	269,728	82,796	97,280	22,620	21,102	141,898	172,448
10,776	14,506	695	386	28,092	25,702	264	468	139	14	120	26	125	454
241,333	115,365	.....	.....	.....	.....	1,426,322	1,536,789	1,426,322	1,536,789	.....	.....	.....	.....
706,286	1,454,334	104,841	104,097	674,926	1,011,471	1,767,007	1,752,882	1,270,207	1,290,177	350,675	261,722	507,464	457,842
33,505	34,015	140	.....	248	.....	881	2,224	881	1,552	.....	70	.....	672
57,235	53,775	3,290	1,586	72,486	77,573	6,117	7,653	990	907	751	1,020	5,114	6,758
52,074	56,180	.....	.....	32,010	30,160	29,093	23,539	4,683	6,410	.....	.....	24,410	17,129
8,108	4,445	.....	.....	4	48	10,635	11,336	6,925	11,026	.....	.....	3,710	310
195,603	214,833	3,140	2,050	3,140	2,059	40,733	69,828	40,066	68,456	665	1,584	665	1,584
252,157	224,414	4,005	2,753	148,212	89,246	198,908	162,340	30,410	25,652	42,140	17,000	168,498	136,688
89	549	2,491	2,020	49,274	53,762	8,299	7,416	50	144	1,195	939	8,222	7,297
51,276	62,409	17,273	14,842	20,165	18,962	3,507	1,125	473	542	942	374	3,025	535
191,946	585,752	329	259	10,447	18,336	53,973	73,989	44,274	58,626	260	.....	9,699	15,340
5,682	7,055	1,458	3,487	52,610	41,530	7,364	6,635	106	134	589	583	7,258	6,501
52,009	62,612	3,052	4,050	18,095	13,829	.....	.....	.....	.....	.....	.....	.....	.....
39,939	41,545	2,502	757	85,499	106,252	17,219	31,496	162	52	1,695	460	17,057	31,406
60,077	75,660	.....	.....	174,956	112,514	149,680	155,321	18,229	21,425	1,295	.....	131,451	133,919
03,057	477,162	25	.....	25	.....	66,535	77,309	66,535	77,169	.....	.....	.....	.....
37,718	32,813	8,342	4,948	10,728	14,470	2,472	1,726	1,242	857	842	791	1,210	862
02,072	1,233,384	.....	.....	.....	.....	379,010	420,698	379,010	420,675	.....	.....	.....	23
57,426	54,984	.....	100	311,332	264,126	681,413	629,742	13,219	11,976	317,390	339,987	668,447	617,606
57,325	57,580	2,456	2,455	192,897	217,106	1,525,607	1,759,000	2,555	7,990	629,016	692,701	1,523,052	1,751,010
83,625	388,514	7,531	4,844	57,035	71,614	16,818	25,262	10,383	18,154	2,725	1,595	6,414	6,959
69,271	2,276,740	38,711	29,261	1,011,279	888,093	3,037,119	3,030,619	1,740,236	1,698,627	934,441	975,666	1,294,549	1,333,654
.....	.....	.....	.....	13,840	12,159	51,619	73,363	.....	.....	.....	.....	51,458	73,014
32,060	137,571	17,482	13,654	606,996	612,110	19,226	14,182	1,003	1,031	10,376	5,022	18,253	13,028
75,166	270,400	.....	.....	13,836	14,741	235,380	256,762	232,262	256,088	.....	.....	3,118	674
19,401	473,551	.....	.....	1,682,412	1,567,359	986,076	1,075,487	108,450	109,839	.....	.....	877,626	965,648
04,815	173,565	19,855	20,075	99,713	96,181	140,028	141,233	80,229	77,987	8,530	8,863	59,792	63,341
.....	20	.....	745	19,021	26,404	849,708	792,464	.....	.....	315,127	304,069	849,835	792,080
35,250	930,941	2,452	2,281	5,733	5,222	11,201	11,202	1,000	1,000	1,000	1,000	1,000	1,000

Portland, Oreg.	304,527	269,755	204,815	173,565	19,855	20,075	99,713	96,181	140,028	141,233	80,229	77,
Pueblo, Colo.	19,469	26,005	.....	20	.....	745	19,021	26,404	849,708	792,464	.....	.....
Richmond, Va.	265,071	255,191	265,359	230,341	2,178	2,261	9,712	24,850	11,941	11,875	7,577	8,
St. Joseph, Mo.	1,724,011	1,626,641	1,280,543	1,199,514	38,309	24,156	442,644	427,172	1,579,572	1,635,607	1,150,004	1,166,
San Antonio	77,290	86,222	64,973	68,034	4,412	6,317	12,318	18,202	30,397	49,002	5,607	7,
Seattle, Wash.	241,104	222,643	229,905	207,157	8,407	9,975	11,199	15,486	72,463	72,582	70,319	69,
Sioux City	2,753,953	2,313,212	1,629,994	1,524,165	94,447	66,013	1,121,268	789,133	568,477	840,492	410,365	585,
Sioux Falls, S. Dak.	364,197	464,889	98,527	106,845	7,059	8,538	265,854	357,154	8,179	7,624	696	1,
South St. Paul	2,902,448	2,868,883	2,030,495	2,054,329	223,664	167,498	859,718	811,910	890,762	1,139,073	467,993	550,
S. San Francisco	253,453	259,029	195,638	188,882	1,349	1,223	57,815	70,147	210,684	237,212	144,570	152,
Spokane, Wash.	127,475	64,778	68,974	38,809	8,227	4,753	58,495	25,862	48,736	29,220	8,135	9,
Springfield, Ill.	103,263	159,333	3,941	3,958	3,514	3,571	99,307	155,335	2,022	2,491	377	
Springfield, Mo.	134,907	122,435	25,445	12,892	16,184	10,697	109,462	109,543	13,876	14,613	37	
Springfield, Ohio	72,803	62,196	5,593	7,711	.....	.....	67,195	54,552	10,438	7,203	945	
Toledo, Ohio	98,435	95,009	25,920	28,324	717	716	72,365	666,07	7,120	8,993	2,208	2,
Washington, D. C.	190,277	148,169	190,277	148,169	.....	.....	.....	.....	11,478	9,195	11,478	9,
Wichita, Kans.	798,691	832,637	763,754	790,613	8,676	30,797	34,937	60,007	140,167	140,424	70,061	84,
Discontinued markets.	88,478	63,901	4,969	6,100	.....	.....	83,509	57,727	14,664	8,112	119	
Total	46,526,928	43,564,383	29,282,671	27,426,444	734,550	622,681	17,191,125	16,114,734	25,597,262	26,834,489	12,252,887	12,841,
Increase or decrease	.....	−2,962,545	.....	−1,856,227	.....	−111,869	.....	−1,076,391	.....	+1,237,227	.....	+588,
Percentage	.....	−6.4	.....	−6.3	.....	−15.2	.....	−6.3	.....	+4.8	.....	+4
5-year average, 1924-1928	.....	45,410,469	.....	28,612,539	.....	720,329	.....	16,775,185	.....	23,541,128	.....	11,179,
Increase or decrease	.....	−1,846,086	.....	−1,186,095	.....	−97,648	.....	−660,451	.....	+3,293,361	.....	+1,661,
Percentage	.....	−4.1	.....	−4.1	.....	−13.6	.....	−3.9	.....	+14.0	.....	+1

[1] Disposition of stock not reported.

NOTE.—This report represents the total livestock movement at the specified stockyards, including through shipments. Direct shipments to packers are included only when such sh

04,815	173,565	19,855	20,075	99,713	96,181	140,028	141,233	80,229	77,987	8,530	8,863	59,792	63,341
.....	20	.....	745	19,021	26,404	849,708	792,464	.....	.....	315,127	304,069	849,835	792,080
65,359	230,341	2,178	2,261	9,712	24,850	11,941	11,875	7,577	8,677	1,350	536	4,364	3,198
80,543	1,199,514	38,309	24,156	442,644	427,172	1,579,572	1,635,607	1,150,004	1,166,824	328,785	381,060	429,493	467,119
64,973	68,034	4,412	6,317	12,318	18,202	30,397	49,002	5,607	7,984	16,892	27,672	24,790	41,018
29,905	207,157	8,407	9,975	11,199	15,486	72,463	72,582	70,319	69,034	115	.....	2,144	3,548
29,994	1,524,165	94,447	66,013	1,121,268	789,133	568,477	840,492	410,365	585,505	102,448	228,748	158,102	254,857
98,527	106,845	7,059	8,538	265,856	357,154	8,179	7,624	696	1,141	1,041	1,496	7,483	6,478
30,495	2,054,329	223,664	167,498	859,718	811,910	890,762	1,139,073	467,993	550,092	110,126	136,217	415,473	582,441
95,638	188,882	1,349	1,223	57,815	70,147	210,684	237,212	144,570	152,264	3,003	7,383	66,095	84,416
68,974	38,809	8,227	4,753	58,495	25,862	48,736	29,220	8,135	9,314	11,567	14,993	40,597	18,907
3,941	3,958	3,514	3,571	99,307	155,335	2,022	2,491	377	666	85	11	1,649	1,801
25,445	12,892	16,184	10,697	109,462	109,543	13,876	14,613	37	33	1,748	59	13,839	14,580
5,593	7,711	.....	.....	67,195	54,552	10,438	7,203	945	965	.....	.....	9,586	6,252
25,920	28,324	717	716	72,365	666,07	7,120	8,993	2,208	2,454	.....	.....	5,003	6,536
90,277	148,169	.....	.....	.....	.....	11,478	9,195	11,478	9,195	.....	.....	.....	.....
63,754	790,613	8,676	30,797	34,937	60,007	140,167	140,424	70,061	84,997	36,257	37,894	70,106	51,224
4,969	6,100	.....	.....	83,509	57,727	14,664	8,112	119	30	.....	.....	14,547	8,082
82,671	27,426,444	734,550	622,681	17,191,125	16,114,734	25,597,262	26,834,489	12,252,887	12,841,125	5,011,160	5,565,118	13,323,939	13,972,537
.....	−1,856,227	.....	−111,869	.....	−1,076,391	.....	+1,237,227	.....	+588,238	.....	+553,958	.....	+648,598
.....	−6.3	.....	−15.2	.....	−6.3	.....	+4.8	.....	+4.8	.....	+11.1	.....	+4.9
.....	28,612,539	.....	720,329	.....	16,775,185	.....	23,541,128	.....	11,179,520	.....	4,709,100	.....	12,352,041
.....	−1,186,095	.....	−97,648	.....	−660,451	.....	+3,293,361	.....	+1,661,605	.....	+856,018	.....	+1,620,496
.....	−4.1	.....	−13.6	.....	−3.9	.....	+14.0	.....	+14.9	.....	+18.2	.....	+13.1

ovement at the specified stockyards, including through shipments. Direct shipments to packers are included only when such shipments pass through the stockyards.

[fol. 1368]

PETITIONER'S EXHIBIT No. 57

Oscar F. Mayer & Company, Chicago, Ill.

	Net worth	Sales	Profits	% earned on Net worth	% earned on Sales
1922	$2,501,286	$10,012,038	$133,713	5.15	1.33
1923	2,579,394	8,591,063	176,974	7.09	2.05
1924	2,624,867	11,180,488	158,261	6.10	1.41
1925	2,702,529	13,447,194	192,963	7.49	1.44
1926	2,980,481	17,766,937	313,706	11.62	1.77
1927	2,988,501	18,692,055	106,009	3.66	.57
1928	3,163,626	21,630,513	290,737	9.69	1.35
1922 to 1928				7.05	1.35

(Pages 1 and 2 of Petitioner's Exhibit 69 follow, side folios 1369, 1370, and 1371.)

[fol. 1369]

PETITIONER'S EXHIBIT 69

Financial Record Twelve Grocery Chains as Reported by Moody's Manual of Industrials

[fol. 1370]

PETITIONER'S EXHIBIT 69, PAGE 1

Sales, Earnings and Number of Stores of Twelve Grocery Chains During the Period 1920 to 1930 as Reported by Moody's Manual of Industrials

Sales (In Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1
The Great Atlantic & Pacific Tea Co.	$235,303	$202,434	$246,941	$302,889	$352,093	$420,000	$500,000	$700,000	$97
The Kroger Grocery & Baking Co.	50,706	44,851	53,754	74,339	90,125	116,235	146,009	161,261	20
Safeway Stores, Inc.	.....	.....	12,468	19,947	28,532	38,692	50,537	69,574	10
The American Stores Co.	103,059	86,068	85,866	94,580	98,179	108,886	116,902	120,665	13
First National Stores, Inc.	.....	.....	.....	.....	.....	48,977	59,038	64,446	7
The National Tea Co.	18,706	16,283	20,632	31,292	39,059	47,451	53,658	58,801	8
MacMarr Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	58,007	7
The Grand Union Co.	.....	.....	.....	.....	.....	27,601	26,240	30,041	3
Daniel Reeves, Inc.	.....	.....	.....	.....	.....	.....	25,821	28,895	3
H. C. Bohack Co., Inc.	11,988	12,493	15,317	16,673	18,703	19,395	21,159	24,734	2
Loblaw Grocerterias Co., Ltd.	.....	695	1,830	3,137	5,066	6,135	7,717	10,517	1
David Pender Grocery Co.	.....	.....	.....	.....	6,825	7,862	10,722	12,599	1
	$419,762	$362,824	$436,808	$542,857	$638,582	$841,234	$1,017,803	$1,239,630	$1,77

(Net income) Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	
The Great Atlantic & Pacific Tea Co.	$2,521	.....	$6,367	$8,181	$11,564	$11,974	$13,984	$18,411	$
The Kroger Grocery & Baking Co.	673	$ 1,052	2,061	2,209	3,186	3,328	4,132	4,377	
Safeway Stores, Inc.	.....	.....	372	747	1,131	1,308	1,481	1,907	
The American Stores Co.	2,249	.....	.....	.....	.....	6,446	7,693	6,622	
First National Stores, Inc.	.....	.....	.....	.....	.....	1,761	2,449	1,593	
The National Tea Co.	167	534	957	1,089	1,473	1,570	1,585	1,996	
MacMarr Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	1,494	
The Grand Union Co.	.....	.....	.....	.....	.....	312	411	541	
Daniel Reeves, Inc.	.....	.....	.....	.....	.....	.....	693	721	
H. C. Bohack Co., Inc.	.....	.....	338	473	407	339	273	580	
Loblaw Grocerterias Co., Ltd.	.....	17	67	125	212	247	360	578	
David Pender Grocery Co.	.....	.....	.....	.....	124	202	292	321	
	$5,610	$1,603	$10,162	$12,824	$18,097	$27,487	$33,333	$39,141	$
Percent Earned on Sales**									
Weighted average on companies reported	(4)1.37	(3)2.59	(6)2.90	(6)2.86	(7)3.35	(10)3.27	(11)3.27	(12)2.92	(

Number of Stores at the End of Each Year*

	1920	1921	1922	1923	1924	1925	1926	1927	
The Great Atlantic & Pacific Tea Co.	4544 G	5088 G	5088 G	9000 G	12000 G	14000 G	15000 (73)	.....	
The Kroger Grocery & Baking Co.	.....	1125 (495)	1413 (611)	1874 (816)	2127 (980)	2856 (1279)	3369 (1423)	3749 (1675)	52
Safeway Stores, Inc.	.....	.....	.....	.....	.....	.....	784 (122)	970 (248)	20
The American Stores Co.	1223 G	1223 G	1223 G	1152 G	1214 G	1792 M	1983 M	2133 M	25
First National Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	1717 (66)	24
The National Tea Co.	143 D	261 D	295 D	514 D	598 D	761 D	840 D	1237 D	16
MacMarr Stores, Inc.	.....	.....	.....	.....	.....	.....	818 D	1037 D	12
The Grand Union Co.	.....	.....	.....	.....	.....	.....	.....	.....	6
Daniel Reeves, Inc.	.....	.....	.....	.....	.....	518 G	551 G	634 G	6
H. C. Bohack Co., Inc.	.....	.....	225 D	254 D	324 M	352 M	391 M	417 M	4
Loblaw Grocerterias Co., Ltd.	.....	.....	.....	.....	.....	36 G	47 G	115 G	1
David Pender Grocery Co.	.....	.....	.....	.....	.....	280 G	324 G	371 G	3
	5910	7697	8244	12794	16263	20595	25107	28380	333

*Figures shown in parentheses indicate the number of fresh meat departments operated.
Where number of fresh meat departments are not shown:
(G) Means reported to operate grocery stores only.
(M) Means reported to operate grocery and fresh meat stores.
(D) Means does not show clearly whether company sells fresh meats.

**Figures in parenthesis indicate number of companies included in arriving at percentages.

PETITIONER'S EXHIBIT 69

Financial Record Twelve Grocery Chains as Reported by Moody's Manual of Industrials

PETITIONER'S EXHIBIT 69, PAGE 1

Sales, Earnings and Number of Stores of Twelve Grocery Chains During the Period 1920 to 1930 as Reported by Moody's Manual of Industrials

Sales (In Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
Pacific Tea Co.	$235,303	$202,434	$246,941	$302,889	$352,093	$420,000	$500,000	$700,000	$972,799	$1,053,693
Baking Co.	50,706	44,851	53,754	74,339	90,125	116,235	146,009	161,261	207,373	286,611
	.....	.....	12,468	19,947	28,532	38,692	50,537	69,574	103,304	213,496
Co.	103,059	86,068	85,866	94,580	98,179	108,886	116,902	120,665	137,312	143,346
Inc.	.....	.....	.....	.....	.....	48,977	59,038	64,446	75,885	107,635
	18,706	16,283	20,632	31,292	39,059	47,451	53,658	58,801	85,882	90,210
	.....	.....	.....	.....	.....	.....	.....	58,007	75,919	87,238
	.....	.....	.....	.....	.....	27,601	26,240	30,041	31,972	36,943
	.....	.....	.....	.....	.....	.....	25,821	28,895	31,569	33,767
	11,988	12,493	15,317	16,673	18,703	19,395	21,159	24,734	26,168	28,866
o., Ltd.	.....	695	1,830	3,137	5,066	6,135	7,717	10,517	13,975	16,553
Co.	.....	.....	.....	.....	6,825	7,862	10,722	12,599	14,519	15,921
	$419,762	$362,824	$436,808	$542,857	$638,582	$841,234	$1,017,803	$1,239,630	$1,776,677	$2,114,279

(Net income) Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
Pacific Tea Co.	$2,521	.....	$6,367	$8,181	$11,564	$11,974	$13,984	$18,411	$24,221	$26,220
Baking Co.	673	$ 1,052	2,061	2,209	3,186	3,328	4,132	4,377	5,324	5,919
	.....	.....	372	747	1,131	1,308	1,481	1,907	3,505	6,147
Co.	2,249	.....	.....	.....	.....	6,446	7,693	6,622	5,571	6,595
Inc.	.....	.....	.....	.....	.....	1,761	2,449	1,593	2,905	4,773
	167	534	957	1,089	1,473	1,570	1,585	1,996	2,822	2,731
	.....	.....	.....	.....	.....	.....	.....	1,494	2,048	2,174
	.....	.....	.....	.....	.....	312	411	541	568	1,021
	.....	.....	.....	.....	.....	.....	693	721	857	1,128
	.....	.....	338	473	407	339	273	580	593	900
o., Ltd.	.....	17	67	125	212	247	360	578	734	849
Co.	.....	.....	.....	.....	124	202	292	321	391	288
	$5,610	$1,603	$10,162	$12,824	$18,097	$27,487	$33,333	$39,141	$49,539	$58,745
s**										
ompanies reported	(4)1.37	(3)2.59	(6)2.90	(6)2.86	(7)3.35	(10)3.27	(11)3.27	(12)2.92	(12)2.79	(12)2.78

Number of Stores at the End of Each Year*

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
Pacific Tea Co.	4544 G	5088 G	5088 G	9000 G	12000 G	14000 G	16000 (73)	.....	.....	15000 M
Baking Co.	.....	1125 (495)	1413 (611)	1874 (816)	2127 (980)	2856 (1279)	3369 (1423)	3749 (1675)	5260 M	5575 M
	.....	.....	.....	.....	.....	.....	784 (122)	970 (248)	2020 (855)	2660 (1366)
Co.	1223 G	1223 G	1223 G	1152 G	1214 G	1792 M	1983 M	2133 M	2546 M	2644 M
Inc.	.....	.....	.....	.....	.....	.....	.....	1717 (66)	2400 (125)	2659 M
	143 D	261 D	295 D	514 D	598 D	761 D	840 D	1237 D	1600 D	1627 D
	.....	.....	.....	.....	.....	.....	818 D	1037 D	1274 M	1394 (272)
	.....	.....	.....	.....	.....	.....	.....	.....	650 M	752 M
	.....	.....	.....	.....	.....	518 G	551 G	634 G	655 G	698 G
	.....	.....	225 D	254 D	324 M	352 M	391 M	417 M	461 M	504 (230)
o., Ltd.	.....	.....	.....	.....	.....	36 G	47 G	115 G	115 G	212 G
Co.	.....	.....	.....	.....	.....	280 G	324 G	371 G	396 G	410 (58)
	5910	7697	8244	12794	16263	20595	25107	28380	33377	34135

parentheses indicate the number of fresh meat departments operated.
fresh meat departments are not shown:
reported to operate grocery stores only.
reported to operate grocery and fresh meat stores.
does not show clearly whether company sells fresh meats.
thesis indicate number of companies included in arriving at percentages.

[fol. 1371]

PETITIONER'S EXHIBIT 69, PAGE 2

Total Assets and Total Stockholders' Investment of Twelve Grocery Chains During the Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Total Assets (at the Beginning of Each Year)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
The Great Atlantic & Pacific Tea Co.	$38,304	$32,897	$39,090	$45,968	$53,413	$64,962	$78,016	$92,366	$113,294	$132,740
The Kroger Grocery & Baking Co.	.....	9,153	9,983	11,999	14,074	16,496	19,199	21,619	24,492	57,114
Safeway Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	9,094	13,088	32,652
The American Stores Co.	24,668	23,954	26,672	27,792	34,862	37,877	43,588	46,351	49,081	44,394
First National Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	14,161	13,958
The National Tea Co.	3,378	3,522	4,842	5,834	9,850	12,075	14,767	16,273	20,377	23,705
MacMarr Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
The Grand Union Co.	.....	.....	.....	.....	.....	.....	.....	.....	8,555	12,435
Daniel Reeves, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,382
H. C. Bohack Co., Inc.	.....	.....	.....	.....	4,366	6,193	6,390	7,608	6,837	8,407
Loblaw Groceterias Co. Inc.	.....	.....	.....	.....	.....	.....	2,115	2,331	3,128	4,874
David Pender Grocery Co.	.....	.....	.....	.....	.....	1,354	1,520	2,341	2,495	2,778
	$66,350	$69,526	$80,587	$91,593	$116,565	$138,957	$165,595	$197,983	$255,508	$338,439
Percent Earned on Total Assets**										
Weighted average on companies reported.	(3)7.44	(2)12.51	(3)17.41	(3)17.99	(4)20.35	(6)17.89	(7)17.09	(8)17.57	(10)18.25	(11)16.72

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
The Great Atlantic & Pacific Tea Co.	$22,491	$27,564	$33,861	$38,964	$45,582	$54,057	$61,470	$71,064	$85,011	$100,547
The Kroger Grocery & Baking Co.	.....	7,695	8,559	9,658	11,168	12,872	15,193	16,279	18,462	45,244
Safeway Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	5,546	8,295	26,899
The American Stores Co.	17,829	19,295	20,606	23,352	31,528	35,353	39,982	43,467	46,670	40,665
First National Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	8,104	8,445
The National Tea Co.	2,620	2,617	2,986	3,792	6,898	8,105	10,956	11,627	13,838	15,884
MacMarr Stores, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
The Grand Union Co.	.....	.....	.....	.....	.....	.....	.....	.....	6,067	10,878
Daniel Reeves, Inc.	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,916
H. C. Bohack Co., Inc.	.....	.....	.....	.....	3,632	4,654	4,659	5,598	5,774	7,845
Loblaw Grocerterias Co., Inc.	.....	.....	.....	.....	.....	.....	1,549	1,786	2,446	3,938
David Pender Grocery Co.	.....	.....	.....	.....	.....	1,020	1,146	1,919	1,998	2,248
	$42,940	$57,171	$66,012	$75,766	$98,808	$116,061	$134,955	$157,286	$196,665	$266,509
Percent Earned on Stockholders' Investment**										
Weighted average on companies reported	(3)11.50	(2)15.38	(3)20.67	(3)21.90	(4)24.71	(6)21.42	(7)20.97	(8)22.12	(10)23.71	(11)21.23

**Figures in parentheses indicate number of companies included in arriving at percentages.

PETITIONER'S EXHIBIT 69, PAGE 2

Total Assets and Total Stockholders' Investment of Twelve Grocery Chains During the Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Total Assets (at the Beginning of Each Year)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
t Atlantic & Pacific Tea Co....	$38,304	$32,897	$39,090	$45,968	$53,413	$64,962	$78,016	$92,366	$113,294	$132,740	$147,391
er Grocery & Baking Co.....	.....	9,153	9,983	11,999	14,074	16,496	19,199	21,619	24,492	57,114	63,665
Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	9,094	13,088	32,652	47,715
rican Stores Co.....	24,668	23,954	26,672	27,792	34,862	37,877	43,588	46,351	49,081	44,394	47,955
ional Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	14,161	13,958	17,314
onal Tea Co.....	3,378	3,522	4,842	5,834	9,850	12,075	14,767	16,273	20,377	23,705	27,639
Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15,550
d Union Co.....	.....	.....	.....	.....	.....	.....	.....	.....	8,555	12,435	13,017
eeves, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,382	5,802
hack Co., Inc.....	.....	.....	.....	.....	4,366	6,193	6,390	7,608	6,837	8,407	9,718
Groceterias Co. Inc.....	.....	.....	.....	.....	.....	.....	2,115	2,331	3,128	4,874	5,629
nder Grocery Co.....	.....	.....	.....	.....	.....	1,354	1,520	2,341	2,495	2,778	3,210
	$66,350	$69,526	$80,587	$91,593	$116,565	$138,957	$165,595	$197,983	$255,508	$338,439	$404,605
nt Earned on Total Assets**											
l average on companies reported.	(3)7.44	(2)12.51	(3)17.41	(3)17.99	(4)20.35	(6)17.89	(7)17.09	(8)17.57	(10)18.25	(11)16.72	

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
t Atlantic & Pacific Tea Co....	$22,491	$27,564	$33,861	$38,964	$45,582	$54,057	$61,470	$71,064	$85,011	$100,547	$118,660
er Grocery & Baking Co.....	.....	7,695	8,559	9,658	11,168	12,872	15,193	16,279	18,462	45,244	51,723
Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	5,546	8,295	26,899	38,044
rican Stores Co.....	17,829	19,295	20,606	23,352	31,528	35,353	39,982	43,467	46,670	40,665	43,144
tional Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	8,104	8,445	10,974
ional Tea Co.....	2,620	2,617	2,986	3,792	6,898	8,105	10,956	11,627	13,838	15,884	19,206
r Stores, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	11,860
nd Union Co.....	.....	.....	.....	.....	.....	.....	.....	.....	6,067	10,878	11,469
eeves, Inc.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,916	4,449
hack Co., Inc.....	.....	.....	.....	.....	3,632	4,654	4,659	5,598	5,774	7,845	8,914
Grocerterias Co., Inc.....	.....	.....	.....	.....	.....	.....	1,540	1,786	2,446	3,938	4,685
nder Grocery Co.....	.....	.....	.....	.....	.....	1,020	1,146	1,919	1,998	2,248	2,312
	$42,940	$57,171	$66,012	$75,766	$98,808	$116,061	$134,955	$157,286	$196,665	$266,509	$325,440
Earned on Stockholders' In-nt**											
l average on companies reported	(3)11.50	(2)15.38	(3)20.67	(3)21.90	(4)24.71	(6)21.42	(7)20.97	(8)22.12	(10)23.71	(11)21.23	

gures in parentheses indicate number of companies included in arriving at percentages.

Financial Record of the Great Atlantic & Pacific Tea Company of America* as Reported by Moody's Manual of Industrials

Year ending Feb. 28, following	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$235,302,887	1928	$2,520,940	1927	1.07%	$22,490,527	1923	11.73
1921	202,433,531	1928	Not reported	....	....	27,563,902	1923	.....
1922	246,940,873	1928	6,367,035	1927	2.58	33,860,524	1923	18.80
1923	302,889,369	1928	8,181,280	1927	2.70	38,963,761	1923	21.09
1924	352,093,342	1930	11,564,327	1930	3.28	45,582,440	1925	25.37
1925	Est. 420,000,000	1930	11,974,260	1930	2.85	54,057,205	1925	22.15
1926	Est. 500,000,000	1930	13,983,881	1930	2.80	61,469,718	1927	22.75
1927	Est. 700,000,000	1930	18,411,119	1930	2.63	71,063,593	1927	25.91
1928	972,799,185	1930	24,220,982	1930	2.49	85,011,262	1930	28.49
1929	1,053,692,882	1930	26,219,631	1930	2.49	100,547,444	1930	26.08
1930	.....	....	.....	....	....	118,659,567	1930	.....

Year ending Feb. 28 following	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets	Number of stores** Total number	Number fresh meat depts.	Moody Vol.
1920	$ 38,303,531	1923	6.5%	4,544G	Not	1921
1921	32,897,376	1923	..	5,088G	rec	1922
1922	39,090,336	1923	16.29	5,088G	port-	1923
1923	45,968,370	1923	17.80	9,000G	ed.	1924
1924	53,412,868	1925	21.65	over 12,000G		1925
1925	64,961,608	1925	18.43	over 14,000G		1926
1926	78,016,257	1927	17.92	over 16,000M	73	1927
1927	92,366,420	1927	19.93	not given		1928
1928	113,293,954	1930	21.38	not given		1929
1929	132,740,469	1930	19.75	over 15,000M		1930
1930	147,390,939	1930				

**Where number of fresh meat departments is not reported:
(G) Means reported to operate grocery stores only.
(M) Means reported to operate grocery and fresh meat stores.

*Founded 1859.
Present company incorporated May 29, 1925.

Facilities as reported in 1930

62 warehouses
32 bakeries
6 salmon canneries
5 manufacturing plants
2 cheese plants
2 laundries
1 printing plant

Employs about 40,000 people

Index

1920 Volume, page 1382
1921 " " 1227
1922 " " 477
1923 " " 1808
1924 " " 2043
1925 Volume, page 1952
1926 " " 2088
1927 " " 2425
1928 " " 1295
1929 " " 2430
1930 " " 1439

Financial Record of the Kroger Grocery & Baking Company* as Reported by Moody's Manual of Industrials

Year ending Dec. 31, following	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$50,705,896	1926	$ 672,709	1926	1.33	.....	.....	.....
1921	44,851,402	1926	1,052,083	1926	2.34	$7,695,229	1924	13.67
1922	53,753,563	1928	2,061,390	1928	3.83	8,559,352	1924	24.08
1923	74,339,108	1928	2,209,174	1928	2.97	9,657,836	1924	22.87
1924	90,124,798	1930	3,186,321	1930	3.54	11,168,100	1924	28.53
1925	116,235,437	1930	3,327,839	1930	2.86	12,872,421	1926	25.85
1926	146,009,373	1930	4,131,925	1930	2.83	15,192,583	1926	27.19
1927	161,261,354	1930	4,377,104	1930	2.71	16,279,025	1928	26.89
1928	207,372,551	1930	5,323,586	1930	2.57	18,461,927	1928	28.84
1929	286,611,215	1930	5,919,097	1930	2.07	45,243,537	1930	13.08
1930	.....	.....	.....	....	....	51,722,895	1930	.....

Year ending Dec. 31	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets	Number of stores** Total number	Number fresh meat depts.	Moody Vol.	
1920	.....	.....	.....	.....	.....	.....	
1921	$9,153,337	1924	11.49	1,125	495	1922	
1922	9,982,605	1924	20.65	1,413	611	1923	
1923	11,998,565	1924	18.41	1,874	816	1924	
1924	14,074,434	1924	22.64	2,127	980*	1930	*1925
1925	16,496,141	1926	20.17	2,256	1,279*	1930	*1926
1926	19,198,536	1926	21.52	3,369	1,423*	1930	*1927
1927	21,619,435	1928	20.25	3,749	1,675*	1930	*1928
1928	24,492,262	1928	21.74	5,260M	Not	1930	
1929	57,114,257	1930	10.36	5,575M	reported	1930	
1930	63,665,059	1930	.....	.....	.....	....	

**Where number of fresh meat departments is not shown:
(M) Means reported to operate grocery and fresh meat stores.

*Incorporated in Ohio, April 3, 1902.

Facilities as reported in 1930
14 bread baking plants
5 cracker bakeries
11 cake bakeries
2 abbat-oirs and packing plants at Columbus and Cincinnati
1 meat processing plant at Detroit
16 warehouses

Owns trade name and rights of the Piggly Wiggly system of retail merchandising. Receives ½% royalty of stores using this system. Piggly Wiggly Corporation owns factory for making store equipment at Memphis, Tenn.

Employs 16,000

Index

1922	Volume, page	1074	1926	Volume, page	575
1923	" "	1883	1927	" "	792
1924	" "	351	1928	" "	85
1925	" "	1153	1929	" "	1230
			1930	" "	606

Financial Record of the Safeway Stores, Incorporated,* as Reported by Moody's Manual of Industrials

Year ending Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1922**	$12,468,290	1927	$371,761	1927	2.98	Not reported.	....	.....
1923**	19,947,321	1927	746,873	1927	3.74		....	.....
1924**	28,532,318	1927	1,131,388	1927	3.97		....	.....
1925**	38,691,930	1928	1,308,404	1928	3.38		....	.....
1926	50,536,513	1930	1,480,685	1930	2.93		....	.....
1927	69,573,685	1930	1,906,674	1930	2.74	$5,546,156	1925	34.38
1928	103,303,598	1930	3,505,098	1930	3.39	8,294,843	1928	42.26
1929	213,496,255	1930	6,147,313	1930	2.88	26,898,556	1930	22.85
1930	.....	....	.....	....	....	38,044,312	1930	.....

Year ending Dec. 31	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets	Number of stores: Total number	Number fresh meat depts.	Moody Vol.
1922**	Not reported.	....	.....	Not reported.	.....	....
1923**		.....	.....		.....	....
1924**		....	.....		.....	....
1925**		....	.....		.....	....
1926	.....	.....	.....	784	122	1927
1927	$9,093,534	1928	20.97	970	248	1928
1928	13,087,811	1928	26.78	2,020	855	1930
1929	32,652,298	1930	18.83	2,660	1,366	1930
1930	47,715,196	1930	.....	.....	.....	....

**Sales and earnings figures for years 1922 to 1925 are consolidated for the combined companies.

*Organized as a holding company, March 24, 1926.

Facilities as reported in 1930

44 warehouses
15 bakeries
2 creameries

Employs 11,000

Index

1927 Volume, page 2123
1928 Volume, page 2949
1930 " 2271

Financial Record of the American Stores Company* as Reported by Moody's Manual of Industrials

Calendar years	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$103,059,303	1925	$2,249,454	1921	2.18	$17,828,647	1924	12.62
1921	86,068,175	1925	not given	1922	....	19,294,610	1924	.....
1922	85,866,395	1925	not given	1923	....	20,606,399	1924	.....
1923	94,579,851	1925	not given	1924	....	23,351,603	1924	.....
1924	98,178,602	1925	not given	1925	....	31,527,589	1925	.....
1925	108,886,071	1930	6,445,772	1930	5.92	35,353,303	1925	18.23
1926	116,902,230	1930	7,692,608	1930	6.58	39,982,384	1927	19.24
1927	120,664,568	1930	6,622,328	1930	5.49	43,466,644	1928	15.24
1928	137,311,513	1930	5,570,669	1930	4.06	46,670,191	1928	11.94
1929	143,346,157	1930	6,594,822	1930	4.60	40,665,019	1930	16.22
1930	.....	....	.....	....	....	43,144,412	1930	.....

Year	Total assets	Moody Vol.	Percent earned on total assets	Number of stores** Total number	Number fresh meat depts.	Moody Vol.
1920	$24,668,191	1924	9.12	1,223G	Not re-ported.	1920
1921	23,754,425	1924	.....	1,223G		1921
1922	26,671,833	1924	.....	1,223G		1922
1923	27,791,994	1924	.....	1,152G		1923
1924	34,861,579	1925	.....	1,214G	.....	1925
1925	37,877,236	1925	17.02	1,792M		1930
1926	43,587,528	1927	17.65	1,983M		1930
1927	46,351,340	1928	14.29	2,133M		1930
1928	49,080,991	1928	11.35	2,546M		1930
1929	44,394,343	1930	14.86	2,644M		1930
1930	47,955,218	1930	.....	.....		....

*Incorporated in Delaware on March 29, 1917.

Facilities as Reported in 1930

8 bakeries
8 warehouses
1 canning plant
1 plant for milk evaporation
Employs 15,000.

Index

1920 Volume, page 625
1921 " " 1425
1922 " " 1365
1923 " " 1544
1924 " " 1726
1925 Volume, page 1847
1926 " " 1962
1927 " " 2271
1928 " " 555
1929 " " 283
" " 28

**Where number of fresh meat departments is not shown:

(G) Means reported to operate grocery stores only.
(M) Means reported to operate grocery and fresh meat stores.

Financial Record of the First National Stores, Incorporated*, as Reported by Moody's Manual of Industrials**

Year	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Ending Dec. 31, 1925..	$48,976,740	1930	$1,760,650	1930	3.59	$6,921,657	1927	25.44
15 months ending Apr. 2, 1927.....	59,038,304	1930	2,449,105	1930	4.15	8,291,103	1927	23.63
Ending Mar. 31, 1928.	64,445,962	1930	1,593,358	1930	2.47	8,103,938	1928	19.66
" 1929.	75,884,639	1930	2,904,884	1930	3.83	8,444,607	1930	34.40
" 1930.	107,635,216	....	4,773,446	....	4.43	10,973,761	1930	43.51
						17,433,554		

Year	Total assets	Moody Vol.	Percent earned on total assets	Number of stores*** Total number	Number fresh meat depts.	Moody Vol.
Ending Dec. 31, 1925.....	$10,342,708	1927	17.02	.....	...	....
15 months ending Apr. 2, 1927....	11,889,636	1927	16.48	.....	...	....
Ending Mar. 31, 1928.....	14,160,739	1928	11.25	1,717	66	1928
" 1929.....	13,957,619	1930	20.81	2,400	125	1929
" 1930.....	17,314,496	1930	.....	2,659M	...	1930
" 1931.....	24,798,368	....	.....	.....	...	....

*Incorporated in Massachusetts, Dec. 28, 1925.

Facilities as Reported in 1930.

Headquarters central warehouse covering 11 acres of floor space at Somerville, Mass. Bakery has capacity of 52,000,000 loaves yearly.

Operates warehouses, bake shop and factories in Boston and warehouse and bakery in Hartford, Conn.

Employs 6,400.

Index

1927 Volume, page 1284 1929 Volume, page 3010
1928 " " 2421 1930 " " 3105

**Not reported on in Moody Volumes prior to 1927.

***Where number of fresh meat departments is not shown:
(M)Means reported to operate grocery and fresh meat stores.

Financial Record of the National Tea Company,* as Reported by Moody's Manual of Industrials

Year ending Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$18,705,979	1926	$166,739	1926	.89	$2,620,460	1924	6.36
1921	16,283,146	1927	534,042	1927	3.28	2,617,199	1924	20.41
1922	20,632,332	1928	957,408	1928	4.64	2,986,236	1924	32.06
1923	31,292,239	1929	1,088,894	1929	3.48	3,792,297	1924	28.71
1924	39,058,830	1930	1,472,993	1930	3.77	6,897,921	1925	21.35
1925	47,450,885	1930	1,569,636	1930	3.31	8,104,795	1926	19.37
1926	53,657,785	1930	1,585,221	1930	2.95	10,956,210	1927	14.47
1927	58,801,376	1930	1,996,041	1930	3.39	11,626,778	1928	17.17
1928	85,881,696	1930	2,822,440	1930	3.29	13,838,173	1929	20.40
1929	90,210,077	1930	2,731,267	1930	3.03	15,884,224	1930	17.19
1930	.....	....	.....	....	....	19,206,137	1930	.....

Year ending Dec. 31	Total assets	Moody Vol.	Percent earned on total assets	Number of stores** Total number	Number fresh meat depts.	Moody Vol.
1920	$3,377,783	1924	4.94	143D	Not	1920
1921	3,522,418	1924	15.16	261D	Re-	1927
1922	4,841,532	1924	19.77	295D	ported.	1928
1923	5,833,902	1924	18.67	514D		1929
1924	9,850,217	1925	14.95	598D		1929
1925	12,074,863	1926	13.00	761D		1929
1926	14,766,737	1927	10.74	840D		1929
1927	16,273,234	1928	12.27	1,237D		1929
1928	20,377,126	1929	13.85	1,600D		1929
1929	23,705,358	1930	11.52	1,627D		1930
1930	27,639,419	1930	.....	.....		....

*Incorporated in Illinois February 6, 1902.

Facilities as Reported in 1930

1 baking plant (Sterling Bakery at Sterling, Illinois, with capacity of 2,850,000 loaves a year).
1 general plant and warehouse in Chicago.
Employs about 9,100.

Index

1920 Volume, page 1245
1921 " " 1306
1922 " " 1142
1923 " " 1956
1924 " " 2226
1925 Volume, page 1196
1926 " " 599
1927 " " 1370
1928 " " 629
1929 " " 2374
1930 " " 1387

**Where number of fresh meat departments is not shown:
(D) Means does not show clearly whether the company sells fresh meats.

Financial Record of McMarr Stores, Incorporated* as Reported by Moody's Manual of Industrials**

Year ending Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1926	.....	....	.....	....	....	.....	....	.....
1927	$58,007,056	1930	$1,493,548	1930	2.57	.....	....	.....
1928	75,918,747	1930	2,047,860	1930	2.70	.....	....	.....
1929	87,237,976	1930	2,173,523	1930	2.49	.....	....	.....
1930	.....	....	.....	....	....	$11,860,201	1930	.....

Year ending Dec. 31	Total assets	Moody Vol.	Percent earned on total assets	Number of stores**** Total number	Number fresh meat depts.	Moody Vol.
1926	.....	....	.....	818D	.....	1930
1927	.....	....	.....	1,037D	.....	1930
1928	.....	....	.....	1,274M	.....	1930
1929	.....	....	.....	1,394	272***	1930
1930	$15,549,640	1930	.....	.....	.....	....

*Incorporated in Maryland January 15, 1929.

Facilities as Reported in 1930

23 warehouses.
2 bakeries.
2 creameries.
5 wholesale grocery houses.
1 coffee and spice house.

Index

1930 Volume, page 1491

**Comparable consolidated figures not reported in Moody Volumes prior to 1930.

***108 have vegetable stands; 22 have delicatessen stands; 2 have drug departments.

****Where number of fresh meat departments is not shown:
(M)Means reported to operate grocery and fresh meat stores.
(D)Means does not show clearly whether the company sells fresh meats.

Financial Record of the Grand Union Company,* as Reported by Moody's Manual of Industrials**

Year ending Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1925	$27,600,821	1930	$311,501	1930	1.13	.....	....	.....
1926*	26,240,254	1930	411,026	1930	1.57	.....	....	.....
1927	30,040,903	1930	541,049	1930	1.80	.....	....	.....
1928	31,972,133	1930	568,300	1930	1.78	$6,066,688	1929	9.37
1929	36,943,122	1930	1,021,385	1930	2.76	10,877,750	1930	9.39
1930	.....	....	.....	....	....	11,469,381	1930	.....

Year ending Dec. 31	Total assets	Moody Vol.	Percent earned on total assets	Number of stores**** Total number	Number fresh meat depts.	Moody Vol.
1925	.....	....	.....	.....	.....	....
1926	.....	....	.....	.....	.....	....
1927	.....	....	.....	.....	.....	....
1928	$8,555,342	1929	6.64	650 M	.....	1929
1929	12,434,999	1930	8.21	752*** M	.....	1930
1930	13,016,861	1930	.....	.....	.....	....

*Incorporated in Delaware May 17, 1928, to acquire The Jones Bros. Tea Co., Inc., and The Oneida County Creameries.

Facilities as Reported in 1930

8 buildings for garages, factories and warehouses in three cities.
Employs 3,100.

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1929 Volume, page 2365 1930 Volume, page 718

**Not reported on in Moody Volumes prior to 1928. No figures on comparable consolidated basis available prior to 1925.

***Also 105 tea and coffee branches serving by 1160 wagon routes rural districts in 24 states.

****Where number of fresh meat departments is not shown:
(M) Means reported to operate grocery and fresh meat stores.

Financial Record of Daniel Reeves, Incorporated,* as Reported by Moody's Manual of Industrials**

Calendar Year	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1925	.....	....	.....	....	....	Not	....	.....
1926	$25,820,708	1929	$693,064	1929	2.68	Re-	....	.....
1927	28,985,290	1930	720,604	1930	2.49	port-	....	.....
1928	31,569,318	1930	857,317	1930	2.72	ed.	....	.....
1929	33,766,924	1930	1,128,349	1930	3.34	$3,916,340	1930	28.81
1930	.....	....	.....	....	....	4,449,259	1930	.....

Year	Total assets	Moody Vol.	Percent earned on total assets	Number of stores*** Total number	Number fresh meat depts.	Moody Vol.
1925	Not	....	.....	518G	Not	1930
1926	Re-	....	.....	551G	Re-	1930
1927	port-	....	.....	634G	port-	1930
1928	ed.	....	.....	655G	ed.	1930
1929	$5,381,958	1930	20.97	698G		1930
1930	5,802,347	1930	.....	710G		1930

*Founded in 1900.

Incorporated in Delaware on December 14, 1928.

Facilities as Reported in 1930

Owns and operates a modern, central warehouse in New York City.

2,300 employees.

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1929 Volume, page 2750. 1930 Volume, page 1819

**No figures prior to 1926 are reported in Moody's Manual of Industrials, except number of stores in 1925.

***Where number of fresh meat departments is not shown:
(G) Means reported to operate grocery stores only.

Financial Record of the H. C. Boback Company, Incorporated,* as Reported by Moody's Manual of Industrials

Year ending Jan. 31, following	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$11,988,253	1925	.....	....	....	Not	....	.....
1921	12,493,476	1925	.....	....	....	Re-	....	.....
1922	15,317,284	1928	$337,855	1925	2.21	port-	....	.....
1923	16,673,190	1928	472,526	1925	2.83	ed.	....	.....
1924	18,703,468	1930	407,405	1930	2.18	$3,631,632	1925	11.22
1925	19,395,241	1930	339,236	1930	1.75	4,654,003	1926	7.29
1926	21,159,069	1930	272,665	1930	1.29	4,659,207	1926	5.85
1927	24,733,554	1930	579,699	1930	2.34	5,597,673	1928	10.36
1928	26,168,158	1930	592,755	1930	2.27	5,773,571	1928	10.27
1929	28,865,869	1930	900,337	1930	3.12	7,844,747	1930	11.48
1930	.....	....	.....	....	....	8,914,254	1930	.....

Year ending Jan. 31, following	Total assets	Moody Vol.	Percent earned on total assets	Number of stores** Total number	Number fresh meat depts.	Moody Vol.
1920	Not	....	.....	.....	...	....
1921	Re-	....	.....	.....	...	....
1922	port-	....	.....	225D	...	1928
1923	ed.	....	.....	254D	...	1928
1924	$4,365,896	1925	9.33	324M	...	1930
1925	6,192,815	1926	5.48	352M	...	1930
1926	6,390,441	1926	4.27	391M	...	1930
1927	7,608,301	1928	7.62	417M	...	1930
1928	6,837,120	1928	8.67	461M	...	1930
1929	8,406,962	1930	10.71	504	230	1930
1930	9,718,288	1930	.....	.....	...	....

*Organized in 1903.
Incorporated in New York, 1913.

Facilities as Reported in 1930.

2 restaurants.
10 automobile accessory stores and gasoline stations.
Has warehouses, bakery, pork packing and tallow plants, office building, power and refrigeration plant, garage and repair shops located on 8½ acre plot in Brooklyn.
2,600 employees.

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1925 Volume, page 1028 1928 Volume, page 411
1926 " " 485 1930 " " 62

**Where number of fresh meat departments is not shown:
(M) Means reported to operate grocery and fresh meat stores.
(D) Means does not show clearly whether the company sells fresh meats.

Financial Record of Loblaw Groceterias Company, Limited,* as Reported by Moody's Manual of Industrials

Year	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
9 mos. ending May 31, 1921	$694,932	1927	$17,423	1927	2.51			
Year ending May 31, 1922	1,829,577	1927	67,339	1927	3.68	Not		
" 1923	3,136,672	1927	124,955	1927	3.98	Re-		
" 1924	5,066,306	1927	211,776	1927	4.18	port-		
" 1925	6,135,192	1927	246,540	1928	4.02	ed.		
" 1926	7,717,459	1927	359,579	1929	4.66	$1,548,667	1927	23.22
" 1927	10,517,093	1930	577,820	1930	5.49	1,786,485	1928	32.34
" 1928	13,975,186	1930	734,487	1930	5.26	2,445,918	1929	30.03
" 1929	16,552,739	1930	849,316	1930	5.13	3,938,207	1930	21.57
" 1930						4,684,776	1930	

Year	Total assets	Moody Vol.	Percent earned on total assets	Number of stores (1) Total number		Number fresh meat depts.	Moody Vol.
9 Mos. ending May 31, 1921							
Year ending May 31, 1922	Not						
" 1923	Re-						
" 1924	port-						
" 1925	ed.						
" 1926	$2,115,290	1927	17.00	36**	G		1926
" 1927	2,331,010	1928	24.79	47***	G		1927
" 1928	3,127,718	1929	23.48	115****	G		1928
" 1929	4,873,643	1930	17.43	115****	G		1929
" 1930	5,629,212	1930		212*****	G		1930

(1) Where number of fresh meat departments is not shown:
(G) Means reported to operate grocery stores only.

* Incorporated April 1, 1921.
Owns 51% of the common stock and 2861 shares of the preferred stock of Loblaw Groceterias, Inc., operating 75 stores in Chicago and 43 in Buffalo.

** All stores in Canada.

*** Includes some stores in the United States.

**** Includes 45 stores in the United States and 70 in Canada.

***** Includes 118 stores in the United States and 94 in Canada.

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1926 Volume, page 818 1928 Volume, page 1485
1927 " , " 398 1929 " , page 879
1930 " , " 1619

Financial Record of David Pender Grocery Company* as Reported by Moody's Manual of Industrials**

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
June 30, 1924	$6,824,627	1927	$124,217	1927	1.82	.....	....	.....
" " 1925	7,862,416	1928	201,577	1928	2.56	$1,019,800	1927	19.77
Dec. 31, 1926	10,721,835	1929	292,390	1929	2.73	1,146,320	1928	25.50
" " 1927	12,599,161	1930	321,198	1930	2.55	1,919,065	1928	16.74
" " 1928	14,519,461	1930	390,778	1930	2.69	1,997,606	1929	19.76
" " 1929	15,920,689	1930	287,715	1930	1.81	2,247,885	1930	12.80
" " 1930	.....	....	.....	....	....	2,312,428	1930	.....

Year ending	Total assets	Moody Vol.	Percent earned on total assets	Number of stores (1) Total number		Number fresh meat depts.	Moody Vol.
June 30, 1924	.....	....	.....	.....		.....	.....
" 30, 1925	$1,354,432***	1926	14.88	280	G	.....	1926
Dec. 31, 1926	1,519,552****	1928	19.24	324	G	.....	1927
" " 1927	2,340,879	1928	13.72	371	G	.....	1928
" " 1928	2,495,469	1929	15.66	396	G	.....	1929
" " 1929	2,777,839	1930	10.36	410		58	1930
" " 1930	3,209,590	1930	.....	.....		.....	....

* Incorporated in Virginia, January 24, 1901.

Facilities as reported in 1930

Has modern bakery at Norfolk, Va., with daily capacity of 50,000 loaves of bread and 5,000 pounds of cake. Also operates bakery and warehouse in Charlotte.

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1926	Volume, page 1739	1928	Volume, page 2105
1927	" , " 1122	1929	" , " 2496
		1930	" , " 1703

** Not reported on in Moody Volumes prior to 1926.
*** As of July 1, 1924.
**** As of July 1, 1925.

(1) Where number of fresh meat departments is not shown:

(G) Means reported to operate grocery stores only.

(Page 1 of Petitioners' Exhibit 70 follows, side folios 1384 and 1385.)

[fol. 1384]

Per. Ex. 70

Financial Record Eight Food Companies as Reported by Moody's Manual of Industrials

[fol. 1385]

P. Ex. 70, p. 1

Eight Food Companies Sales, Earnings, and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Indus

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	$15,023	$13,014	$14,080	$13,569	$91,064	$105,377	$134,550	$145,330	$212,633	$300,021
National Biscuit Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
The Borden Company	120,294	99,880	92,059	100,245	109,667	123,353	124,912	132,047	180,850	328,467
Standard Brands, Incorporated	.....	37,194	38,507	41,233	46,443	56,646	62,952	64,668	64,004	.....
General Foods Corporation	21,910	17,774	17,877	22,205	24,248	27,387	46,896	57,288	101,037	128,037
Gold Dust Corporation	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Beatrice Creamery Company	46,444	35,238	34,143	46,378	46,895	35,051	33,974	52,744	53,307	83,682
United States Dairy Products Corporation	.....	3,564	3,679	4,469	4,696	9,060	13,930	14,858	19,281	24,713
Total	$203,671	$206,664	$200,345	$228,099	$323,013	$356,874	$417,214	$466,935	$631,111	$864,920

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	$761	$890	$1,016	$1,640	$4,882	$5,314	$10,194	$10,460	$15,937	$21,574
National Biscuit Company	5,543	5,677	11,025	12,093	12,882	13,582	14,674	16,277	17,883	21,494
The Borden Company	2,819	2,925	5,174	5,023	5,413	6,297	6,854	7,154	11,354	20,404
Standard Brands, Incorporated	.....	4,680	8,174	8,631	9,843	13,922	18,465	19,424	19,821	.....
General Foods Corporation	1,120	2,102	2,879	2,881	4,105	4,684	11,317	11,368	14,556	19,422
Gold Dust Corporation	2,393 L	2,935 L	2,479 L	.....	673	678	867	1,828	2,732	7,587
Beatrice Creamery Company	863	956	1,176	990	1,010	1,060	1,046	1,221	1,579	1,530
United States Dairy Products Corporation	.....	278	294	120	225	312	761	730	1,169	1,715
Total	$8,718	$14,573	$27,259	$31,378	$39,033	$45,839	$64,178	$68,471	$85,031	$93,665

Percent Earned on Sales**

Weighted Average on Companies Reported	(4) 273	(6) 5.73	(6) 9.34	(6) 8.45	(6) 7.88	(6) 8.84	(6) 11.65	(6) 10.78	(6) 10.21	(5) 7.47

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	.....	.....	.....	.....	$9,704	$13,374	$38,445	$53,102	$59,068	$66,348
National Biscuit Company	$73,369	$75,130	$77,024	$83,243	87,460	90,419	94,078	95,760	97,511	106,914
The Borden Company	36,142	35,891	35,007	36,686	37,519	41,066	39,642	47,933	54,905	92,902
Standard Brands, Incorporated	.....	19,801	24,646	29,148	31,811	35,069	41,749	48,216	51,247	55,801
General Foods Corporation	.....	11,161	8,707	10,470	11,866	12,779	13,585	17,754	30,784	47,909
Gold Dust Corporation	48,671	40,060	37,125	34,646	760	868	1,561	2,961	2,820	16,523
Beatrice Creamery Company	9,873	9,925	10,075	10,430	10,484	10,636	10,901	12,106	14,708	18,170
United States Dairy Products Corporation	.....	.....	.....	1,142	1,547	4,632	5,011	6,951	9,865	12,308
Total	$168,055	$191,968	$192,584	$205,756	$191,151	$208,843	$244,962	$284,785	$320,608	$416,885

Percent Earned on Stockholders' Investment**

Weighted Average on Companies Reported	(4) 4.19	(6) 6.98	(6) 13.47	(6) 17.38	(6) 20.42	(6) 21.95	(6) 26.20	(6) 24.04	(6) 26.52	(7) 25.34

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	.....	.....	.....	.....	$11,597	$15,408	$68,206	$83,744	$89,036	$129,094
National Biscuit Company	$77,730	$85,333	$83,188	$90,954	95,804	98,305	102,039	106,226	109,659	130,942
[illegible] Company	60,587	66,851	56,942	56,339	60,319	68,226	63,775	66,719	75,008	117,884

Per. Ex. 70

Financial Record Eight Food Companies as Reported by Moody's Manual of Industrials

P. Ex. 70, p. 1

l Companies Sales, Earnings, and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
Products Corporation	$15,023	$13,014	$14,080	$13,569	$91,064	$105,377	$134,550	$145,330	$212,633	$300,021	.....
it Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
mpany	120,294	99,880	92,059	100,245	109,667	123,353	124,912	132,047	180,850	328,487	.....
ds, Incorporated	.....	37,194	38,507	41,233	46,443	56,646	62,952	64,668	64,004	.....	.....
Corporation	21,910	17,774	17,877	22,205	24,248	27,387	46,896	57,288	101,037	128,037	.....
poration	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
ery Company	46,444	35,238	34,143	46,378	46,895	35,051	33,974	52,744	53,307	83,682	.....
Dairy Products Corporation	.....	3,564	3,679	4,469	4,696	9,060	13,930	14,858	19,281	24,713	.....
	$203,671	$206,664	$200,345	$228,099	$328,013	$356,874	$417,214	$466,935	$631,111	$864,920	.....

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
Products Corporation	$761	$890	$1,016	$1,640	$4,882	$5,314	$10,194	$10,460	$15,037	$21,574	.....
it Company	5,543	5,677	11,025	12,093	12,882	13,582	14,674	16,277	17,883	21,424	.....
mpany	2,819	2,925	5,174	5,023	5,413	6,297	6,854	7,154	11,354	20,404	.....
ds, Incorporated	.....	4,680	8,174	8,631	9,843	13,922	18,465	19,424	19,821	.....	.....
Corporation	1,120	2,102	2,879	2,881	4,105	4,684	11,317	11,368	14,556	19,422	.....
poration	2,393 L	2,935 L	2,479 L	.....	673	678	867	1,828	2,732	7,587	.....
ery Company	863	956	1,176	990	1,010	1,050	1,046	1,221	1,579	1,539	.....
Dairy Products Corporation	.....	278	294	120	225	312	761	739	1,169	1,715	.....
	$8,713	$14,573	$27,259	$31,378	$39,033	$45,839	$64,178	$68,471	$85,031	$93,665	.....

nt Earned on Sales**

age on Companies Reported	(4) 2.73	(6) 5.73	(6) 9.34	(6) 8.45	(6) 7.88	(6) 8.84	(6) 11.65	(6) 10.78	(6) 10.21	(5) 7.47	.....

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
Products Corporation	.....	.....	.....	.....	$9,704	$13,374	$38,445	$53,102	$50,068	$66,348	$110,603
it Company	$73,369	$75,130	$77,024	$83,243	87,460	90,419	94,078	95,760	97,511	106,914	117,000
mpany	36,142	35,891	35,007	36,686	37,519	41,066	39,642	47,933	54,905	92,902	121,875
ds, Incorporated	.....	19,801	24,646	29,148	31,811	35,069	41,749	48,216	51,247	55,801	68,989
Corporation	.....	11,161	8,707	10,470	11,866	12,779	13,585	17,754	30,784	47,900	59,551
poration	43,671	40,060	37,1	34,646	760	868	1,581	2,961	2,520	16,533	31,173
ery Company	9,873	9,925	10,07	10,430	10,484	10,636	10,891	12,108	14,708	18,170	24,409
Dairy Products Corporation	.....	.....	.....	1,142	-1,547	4,632	5,011	6,951	9,865	12,308	14,706
	$163,055	$191,968	$192,584	$205,756	$191,151	$208,843	$244,982	$284,785	$320,608	$416,885	$548,976

lon Stockholders' Investment**

age on Companies Reported	(4) 4.19	(6) 6.98	(6) 13.47	(6) 17.38	(8) 20.42	(8) 21.95	(8) 26.20	(8) 24.04	(8) 26.52	(7) 25.24	.....

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
y Products Corporation	.....	.....	.....	.....	$11,597	$15,406	$68,296	$83,744	$80,066	$129,024	$179,973
it Company	$77,730	$88,333	$83,188	$90,954	95,394	98,305	102,039	106,226	109,659	120,842	133,225
										117,884	174,046

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	$15,023	$13,014	$14,080	$13,569	$91,064	$105,377	$134,550	$145,330	$212,633	$300,021
National Biscuit Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
The Borden Company	120,294	99,880	92,059	100,245	109,667	123,353	124,912	132,047	180,850	328,467
Standard Brands, Incorporated	.....	37,194	38,507	41,233	46,443	56,646	62,952	64,668	64,004	.....
General Foods Corporation	21,910	17,774	17,877	22,205	24,248	27,387	46,896	57,288	101,037	128,037
Gold Dust Corporation	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Beatrice Creamery Company	46,444	35,238	34,143	46,378	46,895	35,051	33,974	52,744	53,307	83,682
United States Dairy Products Corporation	.....	3,564	3,679	4,469	4,696	9,060	13,930	14,858	19,281	24,713
Total	$203,671	$206,664	$200,345	$228,099	$323,013	$356,874	$417,214	$466,935	$631,111	$864,920

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	$761	$890	$1,016	$1,640	$4,882	$5,314	$10,194	$10,460	$15,937	$21,574
National Biscuit Company	5,543	5,677	11,025	12,093	12,882	13,582	14,674	16,277	17,883	21,424
The Borden Company	2,819	2,925	5,174	5,023	5,413	6,297	6,854	7,154	11,354	20,404
Standard Brands, Incorporated	.....	4,680	8,174	8,631	9,843	13,922	18,465	19,424	19,821	.....
General Foods Corporation	1,120	2,102	2,879	2,881	4,105	4,684	11,317	11,368	14,556	19,422
Gold Dust Corporation	2,393 L	3,935 L	2,479 L	.....	678	678	867	1,828	2,752	7,587
Beatrice Creamery Company	863	956	1,176	990	1,010	1,050	1,046	1,221	1,579	1,539
United States Dairy Products Corporation	.....	278	294	120	225	312	761	739	1,169	1,715
Total	$8,713	$14,573	$27,259	$31,378	$39,033	$45,839	$64,178	$68,471	$85,031	$93,665
Percent Earned on Sales**										
Weighted Average on Companies Reported	(4) 2.73	(6) 5.73	(6) 9.34	(6) 8.45	(6) 7.88	(6) 8.84	(6) 11.65	(6) 10.78	(6) 10.21	(5) 7.47

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	.....	.....	.....	.....	$9,704	$13,374	$38,445	$53,102	$59,008	$66,348
National Biscuit Company	$73,369	$75,130	$77,024	$83,243	87,460	90,419	94,078	95,760	97,511	106,914
The Borden Company	36,142	35,891	35,007	36,686	37,519	41,066	39,642	47,933	54,905	92,902
Standard Brands, Incorporated	.....	19,801	24,646	29,148	31,811	35,069	41,749	48,216	51,247	55,801
General Foods Corporation	.....	11,161	8,707	10,470	11,866	12,779	13,585	17,754	30,784	47,909
Gold Dust Corporation	43,671	40,060	37,125	34,646	760	868	1,581	2,961	2,320	16,583
Beatrice Creamery Company	9,873	9,925	10,075	10,430	10,484	10,636	10,891	12,108	14,708	18,170
United States Dairy Products Corporation	.....	.....	.....	1,142	1,547	4,632	5,011	6,951	9,865	12,306
Total	$163,055	$191,968	$192,584	$205,756	$191,151	$208,843	$244,982	$284,785	$320,608	$416,885
Percent Earned on Stockholders' Investment**										
Weighted Average on Companies Reported	(4) 4.19	(6) 6.98	(6) 13.47	(6) 17.38	(8) 20.42	(8) 21.95	(8) 26.20	(8) 24.04	(8) 26.52	(7) 25.24

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
National Dairy Products Corporation	.....	.....	.....	.....	$11,597	$15,408	$68,296	$83,744	$89,086	$129,024
National Biscuit Company	$77,730	$88,333	$83,188	$90,954	95,394	98,305	102,039	106,226	109,659	120,842
The Borden Company	60,537	66,851	56,942	56,839	60,319	68,226	63,775	66,719	75,003	117,394
Standard Brands, Incorporated	.....	35,575	40,491	43,514	48,255	52,965	62,643	72,589	77,799	82,982
General Foods Corporation	.....	12,957	10,511	11,533	12,800	13,846	15,983	20,370	37,379	55,547
Gold Dust Corporation	62,863	64,373	55,145	51,749	8,744	7,230	5,598	9,620	8,946	27,513
Beatrice Creamery Company	11,274	10,961	10,872	11,190	11,607	11,600	11,838	12,979	15,890	19,542
United States Dairy Products Corporation	.....	.....	.....	2,073	2,635	8,847	11,431	15,786	18,377	22,718
Total	$212,404	$271,050	$257,149	$267,852	$251,451	$276,427	$341,553	$388,082	$432,139	$577,027
Percent Earned on Total Assets**										
Weighted Average on Companies Reported	(4) 3.22	(6) 4.95	(6) 10.09	(6) 13.76	(8) 15.52	(8) 16.58	(8) 18.79	(8) 17.65	(8) 19.68	(7) 18.96

** Figures in brackets indicate number of companies included in arriving at percentages. L = loss.

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
roducts Corporation	$15,023	$13,014	$14,080	$13,589	$91,084	$105,377	$134,550	$145,330	$212,633	$300,021	.....
Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
pany	120,294	99,880	92,059	100,245	109,667	123,353	124,912	132,047	130,850	528,467	.....
Incorporated	.....	37,194	38,507	41,233	46,443	56,646	62,952	64,668	64,004	.....	.....
rporation	21,910	17,774	17,877	22,205	24,248	27,387	46,896	57,288	101,037	128,037	.....
ration	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
y Company	46,444	35,288	34,143	46,378	46,895	35,051	33,974	52,744	53,307	53,682	.....
ry Products Corporation	.....	3,564	3,679	4,469	4,696	9,060	13,930	14,858	19,281	24,713	.....
	$203,671	$206,664	$200,345	$228,099	$323,013	$356,874	$417,214	$466,935	$631,111	$864,920	.....

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
roducts Corporation	$761	$890	$1,016	$1,640	$4,882	$5,314	$10,194	$10,460	$15,937	$21,574	.....
Company	5,543	5,677	11,025	12,093	12,882	13,582	14,674	16,277	17,883	21,424	.....
pany	2,819	2,925	5,174	5,023	5,413	6,297	6,854	7,154	11,354	20,404	.....
Incorporated	.....	4,680	8,174	8,631	9,843	13,922	18,465	19,424	19,821	.....	.....
rporation	1,120	2,102	2,879	2,881	4,105	4,684	11,317	11,368	14,556	19,422	.....
ration	2,393 L	2,935 L	2,479 L	.....	673	678	867	1,828	2,732	7,567	.....
y Company	863	956	1,176	990	1,010	1,050	1,046	1,221	1,579	1,539	.....
ry Products Corporation	.....	278	294	120	225	312	761	739	1,169	1,715	.....
	$8,713	$14,573	$27,259	$31,378	$39,033	$45,839	$64,178	$68,471	$85,031	$93,665	.....

Earned on Sales**

on Companies Reported	(4) 273	(6) 5.73	(6) 9.34	(6) 8.45	(6) 7.88	(6) 8.84	(6) 11.65	(6) 10.78	(6) 10.21	(5) 7.47	.....

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
roducts Corporation	.....	.....	.....	.....	$9,704	$13,374	$38,445	$53,102	$59,068	$66,348	$110,608
Company	$73,369	$75,130	$77,024	$83,243	87,460	90,419	94,078	95,760	97,511	106,914	117,690
pany	36,142	35,891	35,007	36,686	37,519	41,066	39,642	47,933	54,905	92,902	131,875
Incorporated	.....	19,801	24,646	29,148	31,811	35,069	41,749	48,216	51,247	55,801	68,959
rporation	.....	11,161	8,707	10,470	11,866	12,779	13,585	17,754	30,784	47,909	59,561
ration	43,671	40,060	37,125	34,646	760	868	1,581	2,961	2,520	16,583	31,173
y Company	9,873	9,925	10,075	10,430	10,484	10,636	10,891	12,108	14,708	18,170	24,409
ry Products Corporation	.....	.....	.....	1,142	1,547	4,632	5,011	6,951	9,865	12,368	14,706
	$163,055	$191,968	$192,584	$205,756	$191,151	$208,843	$244,982	$284,785	$320,608	$416,885	$548,976

Stockholders' Investment**

on Companies Reported	(4) 4.19	(6) 6.98	(6) 13.47	(6) 17.38	(8) 20.42	(8) 21.95	(8) 26.20	(8) 24.04	(8) 26.52	(7) 25.24	.....

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
roducts Corporation	.....	.....	.....	.....	$11,597	$15,408	$68,296	$83,744	$89,086	$129,024	$179,973
Company	$77,730	$88,333	$88,188	$90,954	96,294	98,305	102,039	106,226	109,659	120,842	133,225
pany	60,537	66,851	56,942	56,839	60,319	65,226	63,775	66,719	75,003	117,884	174,046
Incorporated	.....	35,575	40,491	43,514	48,255	52,965	62,643	72,588	77,799	82,952	77,486
rporation	.....	12,957	10,511	11,533	12,800	13,846	15,933	20,370	37,379	56,547	70,504
ration	62,863	64,373	55,145	51,749	8,744	7,230	5,508	9,620	8,946	27,518	52,945
y Company	11,274	10,961	10,872	11,190	11,607	11,600	11,838	12,979	15,890	19,542	25,923
ry Products Corporation	.....	.....	.....	2,073	2,635	5,847	11,431	15,786	18,377	22,718	27,220
	$212,404	$271,050	$257,149	$267,852	$251,451	$276,427	$341,563	$388,082	$432,139	$577,027	$741,322

Earned on Total Assets**

on Companies Reported	(4) 3.22	(6) 4.95	(6) 10.09	(6) 13.76	(8) 15.52	(8) 16.58	(8) 18.79	(8) 17.65	(8) 19.68	(7) 18.96	.....

brackets indicate number of companies included in arriving at percentages. L = loss.

[fol. 1385a] P. Ex. 70, pp. 2, 3, and 4

National Dairy Products Corporation

Incorporated under the laws of Delaware on Dec. 8, 1923. Business of company and its subsidiaries includes wholesale and retail distribution of milk, cream, butter and other dairy products, and the manufacture and wholesale distribution of ice cream, beverages, condensed milk, butter, semi-solid buttermilk, dried buttermilk, milk powder, milk sugar, casein and other milk by-products. Employs about 30,000.

Company is an operating and holding company controlling directly or indirectly the following companies:

Akron Pure Milk Co. (Del.)
Arctic Dairy Products Co. (Mich.)
Breakstone Brothers, Inc. (Del.)
Breyer Ice Cream Co. (Del.)
Breyer Ice Cream Co., Inc. (N. Y.)
Castles Ice Cream Co. (N. J.)
Chapell Ice Cream Co., Inc. (Del.)
Chestnut Farms Dairy, Inc. (Del.)
City Dairies, Inc. (Mich.)
Clover Dairy Co. (Del.)
Clover Farm Dairy Corp. (Del.)
Collis Products Co. (Del.)
Consolidated Buttermilk Corp. (Del.)
Consumers Dairy Co. (Mich.)
Consumers Dairy Co. (N. J.)
Creameries Investment Co. (Del.)
Detroit Creamery Co. (Mich.)
Dodds Alderney Dairy, Inc. (N. Y.)
Ebling Creamery Co. (Mich.)
Findlay Dairy Co. (Del.)
The Franklin Ice Cream Corp. (Del.)
General Ice Cream Corp. (N. Y.)
Harding Cream Corp. (Del.)
Hydrox Corp. (Del.)
Hydrox Ice Cream Co., Inc. (N. Y.)
Hydrox Ice Cream Co. (Mo.)
The Jersey Ice Cream Co. (Md.)
Keystone Dairy Co. (N. J.)
Lawlor Electrical Refrigerating Co. (Pa.)

Luick Dairy Co. (Del.)
Luick Ice Cream Co. (Del.)
Merchants Ice & Cold Storage Co. (Del.)
Muller Dairies, Inc. (Del.)
Nashville Pure Milk Co. (Tenn.)
National Dairy Co. (Del.)
National Dairy Products Purchasing Corp. (N. Y.)
Ohio Clover Leaf Dairy Co. (Del.)
Ohio-Toledo Ice Cream Co. (Del.)
Research Laboratories of National Dairy Products Corp., Inc. (Md.)
Rieck-McJunkin Dairy Co. (Pa.)
J. D. Roszell Co. (Del.)
Sagal-Lou Products Co. (Del.)
[fol. 1385b] The Sanitary Milk Co. (Ohio).
Sheffield By-Products Co., Inc. (N. Y.)
Sheffield Condensed Milk Co., Inc. (N. Y.)
Sheffield Farms Co., Inc. (N. Y.)
Simmons & Hammond Manufacturing Co. (Del.)
St. Louis Dairy Co. (Del.)
Supplee-Wills-Jones Milk Co. (Pa.)
Telling-Belle Vernon Co. (Ohio).
Trinity Advertising Corp. (N. Y.)
Tri-State Butter Co. (Del.)
Union Ice Cream Co. (Tenn.)
Wisconsin Creameries, Inc. (Wis.)

Sub-subsidiaries

Alex. Grossman & Co., Inc. (N. Y.)
Allen Ice Cream Co. (Ill.)
Bryant & Chapman Co. (Conn.)
Clover Farm Dairy Co. (Tenn.)
Consolidated Products Co. (Neb.)
Erie County Milk Assn. (Pa.)
Harding Cream Co. (Neb.)
The W. E. Hoffman Co. (Pa.)
Jamestown Ice Cream Co., Inc. (N. Y.)
Joliet Ice Cream Co. (Ill.)
Laher Ice Cream Co. (Pa.)
Lily Ice Cream Co. (Tenn.)
Louvain Construction Corp. (N. Y.)
Moore Brothers Co. (Pa.)
Palisade Cheese Co. (N. Y.)

Pittsburgh Ice Cream Co. (Pa.)
Rieck Ice Cream Co. (W. Va.)
Sheffield Farms Co., Ltd. (Quebec, Can.)
Thompson Ice Cream Co. (Ill.)

The growth of this company prior to 1928 centered chiefly around the Sheffield Farms Co., Inc., and related interests and the Breyer Ice Cream Co. Sheffield Farms Co., Inc., in 1926 sales amounted to $58,000,000. They operate more than 350 retail stores and 1,975 delivery routes for the distribution of milk, cream and other products. Also owns and operates 3 large farms for the production of certified milk.

Owns the entire capital stock of the Louvain Construction Co., incorporated in 1914, to handle the construction work for the company in New York City and vicinity.

1928 was the year of large expansion expressly marked by the acquisition of the General Ice Cream Corporation with 24 subsidiaries.

On May 12, 1930, arrangements were concluded for acquisition of Kraft-Phenix Cheese Corporation by National [fol. 1385c] Dairy Products Corporation. This acquisition carried with it control of Southern Dairies Corporation. Kraft-Phenix Corporation has annual sales of about $85,000,000 and has about 16 subsidiaries and in addition controls a number of distributing companies serving the retail trade. Southern Dairies has an annual sales volume of about $12.000,000.

Financial Record of National Dairy Products Corporation* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$15,023,021	1925	$761,293	1925	5.07	Not	....	.....
1921	13,013,921	1925	889,963	1925	6.84	re-	....	.....
1922	14,079,929	1925	1,015,681	1925	7.21	port-	....	.....
1923	13,568,668**	1925	1,640,343**	1925	12.09	ed.	....	.....
1924	91,064,305***	1930	4,882,238***	1930	5.36	$9,703,773	1925	50.30
1925	105,377,152***	1930	5,314,327***	1930	5.04	13,374,258	1930	29.74
1926	134,549,919***	1930	10,194,484***	1930	7.58	38,445,004	1930	26.51
1927	145,330,059***	1930	10,459,863***	1930	7.20	53,101,860	1930	19.69
1928	212,632,077***	1930	15,937,394***	1930	7.50	59,067,984	1930	26.98
1929	300,021,483***	1930	21,574,240***	1930	7.19	66,348,198	1930	32.51
1930	.....	....	.....	....	....	110,603,066	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	Not	....	.....
1921	Re-	....	.....
1922	port-	....	.....
1923	ed.	....	.....
1924	$11,596,960	1925	42.10
1925	15,407,608	1930	24.49
1926	68,295,801	1930	16.09
1927	83,744,293	1930	12.49
1928	89,086,305	1930	17.89
1929	129,023,594	1930	16.71
1930	179,972,507	1930	.....

*Incorporated in Delaware December 8, 1923.

**Includes Rieck-McJunkin Dairy Co. nine months ended 12/31.

***Consolidated statement including figures of companies before acquisition.

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[fol. 1386a] P. Ex. 70, pp. 6 and 7

National Biscuit Company

Incorporated under the laws of New Jersey, February 3, 1898, for 99 years; consolidation of American Biscuit & Mfg. Co., the New York Biscuit Co., and the United States Baking Co.; subsequently other smaller companies were absorbed. Company has erected and equipped several additional factories and plants; now operates plants located as follows:

Owned:

Atlanta, Ga.	Los Angeles, Calif.
Albany, N. Y.	Mansfield, O.
Baltimore, Md. (2).	Marseilles, Ill. (2).
Beacon, N. Y.	Memphis, Tenn.
Buffalo, N. Y. (2).	Milwaukee, Wis.
Burlington, Vt.	Minneapolis, Minn.
Cambridge, Mass.	New York, N. Y. (8).
Charleston, S. C.	Newark, N. J.
Chicago, Ill. (4).	Newburgh, N. Y.
Cincinnati, O. (2).	Oklahoma City, Okla.
Cleveland, O. (2).	Omaha, Neb.
Clinton, Ia.	Philadelphia, Pa. (2).
Denver, Colo.	Pittsburgh, Pa. (2).
Des Moines, Ia.	Rochester, N. Y.
Detroit, Mich.	St. Joseph, Mo.
East Liberty, Pa.	St. Louis, Mo.
Elmira, N. Y.	Salt Lake City, Utah.
Glens Falls, N. Y.	San Antonio, Tex.
Grand Rapids, Mich.	Toronto, Can.
Houston, Tex.	Watertown, N. Y.
Indianapolis, Ind.	Wilmington, N. C.
Kansas City, Mo.	York, Pa.

Leased:

Birmingham, Ala.	Syracuse, N. Y.
Perth Amboy, N. J.	Zanesville, O.

The manufacturing plants included, in many instances, their own machinery, carpenter and box shops. The company has in operation about 250 selling agencies, or branches, which receive their shipments from the manu-

facturing plants and distribute to the various customers. The company's business, aside from a small output of bread, is exclusively the manufacture of biscuit; over 225 varieties being produced, many of which are protected by trademarks and trade names.

In March, 1926, acquired controlling interest in National Milling Company, Toledo, Ohio, producing 6,000 barrels of flour daily.

[fol. 1386b] In June 1927, the Canadian company purchased Telfer Biscuit Co., Ltd., Toronto; also in 1927, company purchased Frank E. Block Biscuit Bakery in Atlanta, Ga. and McCulla & Tyler Bakery of Birmingham, Ala.

In 1928 acquired Christie, Brown & Co., Ltd., Holland Rusk Co. and in August of 1928 acquired the Iten Biscuit Co. of Nebraska, Iowa, Tennessee and Oklahoma. Acquired controlling interest in Shredded Wheat Co., January 1, 1929. In April, 1930, negotiations were under way for acquisition of Pacific Coast Biscuit Co.

Employs 25,000 people. Company has shown steady expansion and growth.

Financial Record of National Biscuit Company* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	Not reported.	....	$5,543,120	1922	....	$73,369,312	1922	7.56
1921		....	5,677,461	1922	....	75,129,597	1922	7.56
1922		....	11,024,980	1928	....	77,024,223	1922	14.31
1923		....	12,092,828	1928	....	83,243,108	1928	14.53
1924		....	12,881,530	1930	....	87,460,062	1928	14.73
1925		....	13,581,697	1930	....	90,419,197	1930	15.02
1926		....	14,674,162	1930	....	94,078,498	1930	15.60
1927		....	16,277,158	1930	....	95,760,485	1930	17.00
1928		....	17,883,365	1930	....	97,510,579	1930	18.34
1929		....	21,423,571	1930	....	106,913,669	1930	20.04
1930		....	.....	....	....	117,690,261	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	$77,730,025	1922	7.13
1921	80,332,875	1922	7.07
1922	83,188,073	1922	13.25
1923	90,954,396	1928	13.30
1924	95,394,207	1928	13.50
1925	98,305,470	1930	13.82
1926	102,038,736	1930	14.38
1927	106,225,633	1930	15.32
1928	109,659,335	1930	16.31
1929	120,841,623	1930	17.73
1930	133,224,842	1930	.....

*Incorporated in New Jersey February 3, 1898.

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[fol. 1387a] P. Ex. 70, pp. 9, 10, & 11

The Borden Company

In 1928, this Company embarked on an expansion program and added Ice Cream through acquisition of J. M. Horton Company and The Reid Ice Cream Company. Mince meat, dried whole milk, and dried fruit juices were added by acquiring Merrell-Soule Company. Additional products added includes Dryco Infant Food, Chateau Cheese, Eagle Brand Condensed Milk, etc.

The Company was incorporated April 24, 1899, in New Jersey, as Borden's Condensed Milk Company, successor to the New York Condensed Milk Company, also a New Jersey Company, which succeeded a business originally established in 1857. As of July 1, 1929, under a co-ordination plan, the company became solely a holding company, four wholly-owned major sub-holding companies being formed to conduct the operations of four general groups, namely:

(1) Food products group, comprising the manufacture and sale of Eagle Brand and other brands of condensed milk, evaporated, malted and dry milk, loaf, soft and fancy cheeses, casein products, caramels, mince meat, dried fruit juices, etc.
(2) Fluid milk group, handling the purchase and distribution of milk, cream, butter, eggs, etc.
(3) Ice cream group, for the manufacture and sale of ice cream and allied products.
(4) Produce group, handling the purchase, production and sale of farm produce—butter, eggs, etc.

The company and its subsidiaries employ approximately 32,242 people.

The subsidiaries through which each of the sub-holding companies operate, as of December 31, 1929, are as follows, acquisitions during 1929 being marked (*):

(1) Food Products group (controlled by Borden's Food Products Co., Inc.):
Borden's Milk Products Co., Inc.
Borden Co., Ltd. (The) (Canada)
Borden Southern Co. (The)
Borden Western Co. (The)

Borden Co. of Pennsylvania (The)
Borden Co. of Texas (The)
Bannert (F. X.) & Co., Inc.
Bannert Co., Ltd. (Canada)
[fol. 1387b] *Barber (A. H.) & Co., Inc.
*Casein Mfg. Co. of Amer., Inc. (The)
Chateau Cheese Co., Ltd.
Canadian Milk Products, Ltd. (Canada)
*Dry Milk Co., Inc. (The)
*Galloway-West Co., Inc.
*Granert Cheese Co., Inc.
*Hasselbeck Cheese Co.
Lakeside Cheese Co.
Lawrence (W. A.) & Son, Inc.
*Maricopa Creamery Co., Inc.
Menell-Sorle Co., Inc.
Menell-Sorle Co., Ltd. (England)
*Monroe Cheese Co., Inc. (The)
Moynear Co-operative Creamery, Ltd. (Canada)
*National Milk Sugar Co., Inc.
Schmitt Bros., Inc.
Thompson's Malted Milk Co., Inc.

(2) Fluid Milk group (controlled by Borden's Dairy Products Co., Inc.):

*Averill Dairy Co., Inc.
Belle-Isle Creamery Co., Inc.
Borden's Farm Products Co., Inc.
Borden's Farm Products, Ltd. (Canada)
Borden's Farm Products Co. of Ill.
*Borden's Farm Products Co. of Cal., Ltd.
Capital Dairy Co.
*Castanea Dairy Co., Inc.
*Caulfield's Dairy, Ltd. (Canada)
Cornell Dairy Products, Ltd. (Canada)
*Dairy Dale Co., Inc.
Fresno Jersey Farm Dairy Co.
Gobel-Risdon Creamery Co., Inc.
Green Mountain Dairy
Gridley Dairy Co.
Hamilton Milk Co., Inc.
Kennedy Dairy Co.
Laurentian Dairy Co., Ltd. (Canada)

Mansfield-Caughey Co.
Moores & Ross, Inc.
Ottawa Dairy, Ltd. (Canada)
*Plainfield Milk & Cream Co., Inc.
Racine Pure Milk Co., Inc.
*Springfield Dairy Products Co., Inc.
*Standard Creameries Co., Ltd.
*Terre Haute Pure Milk & Ice Cream Co., Inc.
*Walker-Gordon Lab. Co., Inc.
Wieland Dairy Co., Inc.

(3) Ice Cream group (controlled by Borden's Ice Cream & Milk Co., Inc.):

Aurora Ice Cream Co., Inc.
City Dairies Co., Inc. (The)
*Clover Ice Cream Co., Inc.
*Cunningham (John T.) Ice Cream Co., Inc.
Dairy Made Ice Cream Co., Inc.
Furnas Ice Cream Co., Inc. (The)
*Hendler Creamery Co., Inc.
*Horn Ice Cream Co., Inc. (The)
Horton (J. M.) Ice Cream Co., Inc.
*Hosler Ice Cream Co., Inc.
Jersey Ice Cream Co., Inc.
*McBride Bros. Ice Cream Co., Inc.
Muldoon Dairy Co.
Neaker Ice Cream Co., Inc. (The)
Peoples Fuel & Supply Co., Ind.
*Purity Ice Cream & Dairy Co., Inc. (The)
Reid Ice Cream Corp.
*Red Wing Corp.
*Sharpless-Hendler Ice Cream Co.
South Chicago Ice Cream Co., Inc.
*Supreme Ice Cream Co., Inc. (The)
*Trojan Ice Cream Corp.
Wieland Ice Cream Co., Inc.

(4) Produce group (controlled by Borden's Produce Co., Inc.):

*Amos Bird Co. (The)
*Augenblick (M.) & Bro., Inc.
El Paso Creamery Co.

*Fox River Butter Co., Inc.
*Hanford Produce Co.
*Keith (H. J.) Co.
*Kirschbraun Co., Inc.
*Mistletoe Creameries, Inc.
Morning Glory Creameries, Inc.
*Norfolk Poultry Co.
Pool Creamery Co.
Texas Creamery Cold Storage Co.
*Titman Egg Corp.
Western Ice Co.
*Willow Springs Creamery Co.

[fol. 1387c] In addition to the above, the company has acquired as of January 1, 1930, and subsequently, the following companies:

Adirondack Dairy Corp.
Bagel Bros. Dairy, Inc.
Ballantyne Dairies, Ltd. (Canada)
Benson Dairy Co.
Boulevard Dairy Co., Inc.
Carlsen (C.) Dairy Co.
Certified Ice Cream Co.
Collar City Creamery Co., Inc.
Canan & Fox
Chilicote Bottling Co.
Dairy Products Co. (The)
Dallas Milk Co., Inc.
Eighty-five Jane St. Corp.
Hall Ice Cream Co., Inc. (The)
Halls, Ltd.
Hamilton Dairies, Ltd. (Canada)
Hildebrecht Ice Cream Co.
Hehlfelder Dairy Co.
Home Dairy of Glens Falls
Huber Ice Cream Co.
Johnson Dairy Co.
Joubert (J. J.), Ltd.
Lone Star Ice Cream Co.
Mitchell Dairy Co., Inc. (The)
Pure Milk Co., Ltd. (Canada)

Purity Ice Cream Co.
Walkerside Dairy, Ltd. (Canada)
Westgate (W. T.) (Canada)
Willow Brook Dairy, Inc.
Windsor City Dairy, Ltd. (Canada)
Winnetka Sanitary Dairy Co.
Wint's Dairy

The following companies are also wholly-owned subsidiaries: Borden Realty Co. (incorporated in New York, Feb. 1, 1921, with a capital of $100,000, par $100 stock), which owns a 23-story office building at Madison Ave. and 45th St., New York, nine floors of which are occupied by the company; Borden's Premium Co., Inc., conducting stores for the redemption of premium labels and coupons; and The Borden Sales Co., Inc.

[fol. 1388]

P. Ex. 70, p. 12

Financial Record of The Borden Company* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$120,293,572	1925	$2,818,860	1925	2.34	$36,141,852	1923	7.80
1921	99,879,887	1927	2,924,746	1927	2.93	35,890,577	1923	8.15
1922	92,058,759	1927	5,173,749	1927	5.62	35,006,673	1923	14.77
1923	100,245,160	1927	5,023,297	1927	5.01	36,685,632	1923	13.69
1924	109,666,633	1930	5,412,705	1930	4.94	37,518,871	1925	14.43
1925	123,352,833	1930	6,297,235	1930	5.11	41,065,879	1925	15.33
1926	124,912,098	1930	6,853,741	1930	5.49	39,641,635	1927	17.29
1927	132,046,779	1930	7,154,445	1930	5.42	47,932,760	1927	14.93
1928	180,849,995	1930	11,354,331	1930	6.28	54,904,864	1930	20.68
1929	323,466,989	1930	20,403,725	1930	6.21	92,902,359	1930	21.96
1930	.....	....	.....	....	....	131,874,740	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	$60,537,303	1923	4.66
1921	66,851,077	1923	4.38
1922	56,941,777	1923	9.09
1923	56,838,733	1923	8.84
1924	60,319,070	1925	8.97
1925	68,226,350	1925	9.23
1926	63,775,148	1927	10.75
1927	66,718,749	1927	10.72
1928	75,002,529	1930	15.14
1929	117,883,588	1930	17.31
1930	174,046,337	1930	.....

*Incorporated April 24, 1899 in New Jersey as Borden's Condensed Milk Co. Name changed October, 1919. Became Holding Company July 1, 1929.

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1923 Volume, page 1615
1925 " " 1031
1927 " " 1247
1930 " " 2533

[fol. 1388a] P. Ex. 70, p. 13

Standard Brands, Inc.

In 1920 this Company was known as the Fleischmann Co., and manufactured yeast, vinegar, malt, extract, dried grains and industrial alcohol. Continued as the Fleischmann Co., until Aug. 31, 1929, when it merged with the Royal Baking Powder Co., manufacturing baking powder, gelatine desserts and other products.

On the same date it merged with Chase & Sanborn, Inc., whose business was the roasting of coffees and the packing and distributing of teas and coffee.

And on the same date it also merged with E. W. Gillette Co., Ltd., Toronto, Can., a company manufacturing baking powder, dry yeast and lye in Canada.

Company also acquired entire ownership of the Widlar Food Products Co., handling the following products: pickles, olives, salad dressing, teas, coffees, canned corn and condiments.

Name of company changed to Standard Brands, Inc., on Aug. 31, 1929.

The name of the constituents and subsidiary companies are:

The Fleischmann Co.
The Fleischmann Transportation Co.
The Fleischmann Malting Co.
The American Diamalt Co.
Royal Baking Powder Co., and subsidiaries.
E. W. Gillette Co., Inc.
Chase & Sanborn, Inc.
Widlar Food Products Co.
Standard Brands of California.
Standard Brands, Ltd., Canada.
Compania de Levadura Fleischmann S. A. (Cuba).

Financial Record of Standard Brands, Incorporated,* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	... ***	....	... ***	....	....	...	....	.....
1921	**$37,194,496	1927	$4,680,250	1927	12.58	$19,801,284****	1922	23.64
1922	**38,506,689	1927	8,173,776	1927	21.23	24,646,032	1923	33.16
1923	**41,232,783	1930	8,630,566	1930	20.93	29,147,801*****	1923	29.61
1924	**46,442,692	1930	9,843,233	1930	81.19	31,810,978	1925	30.94
1925	**56,645,813	1930	13,922,106	1930	24.58	35,068,940	1925	39.70
1926	**62,951,699	1930	18,464,578	1930	29.33	41,749,274	1927	44.23
1927	**64,668,138	1930	19,423,596	1930	30.04	48,216,173	1927	40.28
1928	**64,004,366	1930	19,820,669	1930	30.97	51,247,270	1929	38.68
1929	... ***	....	... ***	....	....	55,800,760	1929	.....
1930	...	....	...	....	....	68,959,487	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	...	....	.....
1921	$35,575,223 ****	1922	13.16
1922	40,490,971	1923	20.19
1923	43,514,267 *****	1923	19.83
1924	48,255,212	1925	20.40
1925	52,965,260	1925	26.29
1926	62,642,628	1927	29.48
1927	72,587,889	1927	26.76
1928	77,799,358	1929	25.48
1929	82,952,006	1929	.....
1930	77,466,133	1930	.....

*Incorporated in Delaware June 28, 1929.
**The Fleischman Co. and Subsidiaries.
***Figures not reported.
****June 30, 1920.
*****Oct. 31, 1922.

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1927	Volume, page 957	1927	Volume, page 743
1923	" " 1768	1929	" " 57
1925	" " 1102	1930	" " 2493

[fol. 1389a] P. Ex. 70, pp. 15, 16, and 17

General Foods Corporation

Incorporated in Delaware Feb. 15, 1922, as Postum Cereal Co., Inc., succeeding a company of the same name incorporated Jan. 22, 1920. Name changed to Postum Co., Inc., Mar. 9, 1927, and to present title July 24, 1929.

The following is a list of companies acquired chronologically arranged according to the year in which they were acquired:

1925—The Jell-O Co., Inc.
1926—Iglehart Bros., Inc.
Minute Tapioca Co.
1927—Walter Baker & Co., Ltd.
Franklin Baker Co.
Richard Hellman, Inc.
The Log Cabin Products Co.
1928—Cheek-Neal Coffee Co.
La France Mfg. Co.
Calumet Baking Powder Co.
1929—Certo Corporation.
Frosted Foods Company, Inc.
General Sea Foods Corporation.
Whitman, Ward & Lee Co.
Arnold & Winsor Co.
Batchelder, Snyder, Dorr & Doe Co.
Frank C. Pearce Co.
Mitchell & McNeill, Ltd.
North Atlantic Oyster Farms, Inc.
Diamond Crystal Salt Co.
Blue Point Co., Inc.
Douglas-Pectin, Ltd.

Products of General Foods and affiliated companies chronologically arranged according to the year in which they were added:

1920—Postum Cereal.
to Instant Postum.
1924 Grape-Nuts.
Post Toasties.
Post's Bran Flakes.
Post's Whole Bran.

1925—Jell-O.
Institution Jell-O.
Genesee Plain Gelatin.
Genesee Gelatin Dessert.
Genesee Pudding Powder.
D-Zerta.
Ice Cream Powder.

[fol. 1389b]

1926—Swans Down Cake Flour.
Instant Swans Down.
Swans Down Graham Flour.
Minute Tapioca.
Minute Gelatin.
Star Pearl Tapioca.
Lightning Tapioca.
1927—Walter Baker's Premium No. 1 Chocolate.
Walter Baker's Breakfast Cocoa.
Walter Baker's Dot Sweet Chocolate.
Walter Baker's Caracas Sweet Chocolate.
Walter Baker's German's Sweet Chocolate.
Walter Baker's Milk Chocolate Bar.
Walter Baker's Milk Chocolate Almond Bar.
Walter Baker's Chocolate Coatings and Liquors.
Post's Bran Chocolate.
Franklin Baker's Premium Shred Coconut.
Franklin Baker's Brazil Shred Coconut.
Franklin Baker's Milk Packed Coconut.
Franklin Baker's Southern Style Coconut.
Franklin Baker's Banner Coconut.
Franklin Baker's Snow Drift Coconut.
Franklin Baker's Bulk Coconut.
Coconut Oil.
Copra Oil Cake.
Cashew Nuts.
Log Cabin Syrup.
Wigwam Syrup.
Hellmann's Mayonnaise.
Hellmann's Olive Relish.
Hellmann's Thousand Island Dressing.
Hellmann's Russian Dressing.
Hellmann's Sandwich Spread.
Hellmann's Southern Relish.

Hellmann's Tartar Sauce.
Hellmann's Horse Radish.
Hellmann's Beet Radish.
1928—Maxwell House Coffee.
Maxwell House Tea.
Maxwell House Tea Balls.
Calumet Baking Powder.
La France.
Satina.
1929—Certo.
Pectin.
Sanka Coffee (De-Caffeinated).
Diamond Crystal Salt.
Products of General Seafoods Corporation—Fish and Other Seafoods;
Products of Batchelder, Snyder, Dorr & Doe Co.—Meats, Fruits, Vegetables, Dairy Products, Preserves, and Condiments.
Blue Point Oysters.
Sealshipt Oysters.
By-products of Corn and Wheat
Wheat Flour.
Corn Flour.
Corn Meal.
Chops, Crits.
Corn Oil.
Cattle Feeds.

[fol. 1389c] Batchelder & Snyder Co.: This company was incorporated under the laws of Massachusetts in 1900. Engaged in food distributing in New England and does a large business in the processing of meat products, sausage manufacturing, poultry dressing, curing of hams, etc.; in addition does a large wholesale business in dairy products and provisions. Plant located in Boston. Company was acquired by General Foods Corporation in 1929.

Quotation from the annual report of the General Foods Corporation:

"One example of how General Foods keeps step with the latest scientific developments is to be found in the Birdseye Quick-Freezing Process. For many years the trend has been toward packaged products. This trend has been confined largely to non-perishable foods. But with the de-

velopment of the Birdseye Quick-Freezing Process the house-wife may soon buy perishable products, as well, in package form.

"The quick-freezing process was invented by a New England scientist named Clarence Birdseye. Fresh food is packaged and then subjected suddenly to a temperature of 50 degrees below zero. The freshness and flavor of the food are sealed in, and they remain sealed in until the food is cooked or served by the housewife.

"The process has been used for several years by General Seafoods Corporation in the handling of fish fillets. It is expected that meats, vegetables, and a number of fruits will be distributed in quick-frozen, packaged form."

Plants are located at Battle Creek, Mich., Leroy and Fairport, N. Y., Evansville, Ind., Chicago, Ill., Hoboken, N. J., Long Island City, N. Y., Orange and Dorchester, Mass., Bridgeburg and Windsor, Ont., Montreal, Can., Manila and San Pabla, P. I. Employs 5,000 people.

[fol. 1390]

P. Ex. 70, p. 18

Financial Record of General Foods Corporation** as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$21,910,177	1926	$1,119,902	1926	5.11	*	....	.....
1921	17,774,284	1926	2,101,677	1926	11.82	$11,160,862	1924	18.83
1922	17,877,364	1928	2,878,722	1928	16.10	8,706,956	1924	33.06
1923	22,205,410	1928	2,881,466	1928	12.98	10,469,611	1924	27.52
1924	24,247,940	1930	4,105,357	1930	16.93	11,866,105	1924	34.60
1925	27,386,919	1930	4,684,162	1930	17.10	12,778,721	1926	36.66
1926	46,896,274	1930	11,317,442	1930	24.13	13,585,108	1926	83.31
1927	57,287,853	1930	11,368,219	1930	19.84	17,754,078	1928	64.03
1928	101,037,091	1930	14,555,683	1930	14.41	30,783,731	1928	47.28
1929	128,036,791	1930	19,422,314	1930	15.17	47,908,620	1930	40.54
1930	.....	....	.....	....	....	59,561,002	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	$..... *	....	.....
1921	12,956,732	1924	16.22%
1922	10,511,104	1924	27.39
1923	11,533,435	1924	24.98
1924	12,899,790	1924	31.82
1925	13,845,691	1926	33.83
1926	15,933,308	1926	71.03
1927	20,369,953	1928	55.81
1928	37,379,227	1928	38.94
1929	56,546,700	1930	34.35
1930	70,503,782	1930	.....

* Not reported.

**Incorporated in Delaware February 15, 1922.
Changed to Postum Company, Inc., March 9, 1927 and to present Company July 24, 1929.

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1924 Volume, page 392
1926 " " 616
1928 " " 1617
1930 " " 3015

P. Ex. 70, pp. 19 & 20

[fol. 1390a] Gold Dust Corporation

Until September 1923, this company was known as American Cotton Oil Co., at which time it liquidated its assets and withdrew from the cotton seed oil business, concentrated on soap and washing powder business and changed its name to Gold Dust Corporation.

In November, 1925, it acquired F. F. Dalley Corporation and subsidiaries, manufacturers of shoe polish.

In December, 1928, it acquired the American Linseed Co., after which it discontinued the linseed oil business and retained the Best Foods Co., a subsidiary, through which it added "Best Food" products consisting of Nucoa Margarine, Mayonnaise, Relish spread, Peanut Butter, Thousand Island Dressing, Shortening, Bread and Butter Pickles, and Pickle Relish. In February, 1929, it acquired Standard Milling Co., through which it added the following products: Heckers' Superlative Ceresota, H-O-Oats, Heckers' Cream Farina, and Force.

Standard Milling Co. is one of the leading flour milling companies in the country.

In September, 1929, it acquired 46,000 shares of Beech-Nut Packing Co. from United Cigar Stores Co.

Subsidiaries of Gold Dust Corporation:

Gold Dust Corp., Ltd., Canada.
2 in 1-Shinola-Bixby Corp.
2 in 1 Polishes, Ltd., Canada.
The Best Foods, Inc.
American Linseed Co. of Calif.
Northern Cocoanut Products Corp.
Fanning Bread & Buttle Pickle Co., Inc.
Preserves & Honey, Inc.
The Best-Clymer Co.
Daisy Roller Mills.
Duluth-Superior Milling Co.
Empire State Flour Mills.
Hecker-H-O Co., Inc.
Hecker-H-O Co. of Canada, Ltd.
Hecker-Jones-Jewell Milling Co.

Northwestern Consolidated Milling Co., Minnesota..
[fol. 1390b] Northwestern Consolidated Milling Co. of New York.
Standard Milling Co. of N. Y., Inc.
Standard Milling Co. of Canada, Ltd.
James Goldie Co., Ltd., Canada.
Galt Flour Mills, Ltd.
S. J. Cherry & Sons, Ltd.
Wyandotte Elevator Co., Inc.

Financial Record of Gold Dust Corporation* as Reported by Moody's Manual of Industrials

Year ended Aug. 31,	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
American Cotton Seed Oil Co., 1920	Not given	....	D $2,392,531***	1923	....	$43,671,353***	1923	5.48 loss
" " " 1921	" "	....	D 2,934,512***	1923	....	40,059,791***	1923	7.33 loss
" " " 1922	" "	....	D 2,479,390***	1923	....	37,125,279***	1923	6.68 loss
" " " 1923	" "	....	Not given	....	....	34,645,889***	1923	.....
Gold Dust Corporation, 1924	" "	....	673,099**	1929	....	760,015****	1925	88.56
" 1925	" "	....	677,885**	1929	....	867,542***	1926	78.14
" 1926	" "	....	867,375**	1929	....	1,580,927***	1927	54.86
" 1927	" "	....	1,827,650**	1929	....	2,960,757***	1928	61.73
" 1928	" "	....	2,731,769**	1929	....	2,519,753***	1928	108.41
Dec. 31, Gold Dust Corporation, 1929	" "	....	7,586,964	1930	....	13,532,952*****	1929	45.89
" 1930	" "	....	.....	....	....	31,173,314	1930	.....

Year ended Aug. 31	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
American Cotton Seed Oil Co. 1920	$62,863,174 ***	1923	3.81 loss
" " " 1921	64,372,575 ***	1923	4.56 loss
" " " 1922	55,144,748 ***	1923	4.50 loss
" " " 1923	51,749,014 ***	1923	.....
Gold Dust Corporation, 1924	8,743,681 ****	1925	7.70
" 1925	7,230,072 ***	1926	9.36
" 1926	5,598,149 ***	1927	15.49
" 1927	9,620,413 ***	1928	19.00
" 1928	8,946,448 ***	1928	30.53
Dec. 31, Gold Dust Corporation, 1929	27,517,788 *****	1929	27.57
" 1930	52,945,323	1930	.....

*Incorporated in New Jersey December 20, 1928 (Formerly American Cotton Oil Company).
**Gold Dust Corp. Fiscal Years Ended Aug. 31.
***Aug. 31—American Cotton Oil Co.
****Jan. 31, 1924.
*****Oct. 31, 1928.

D Deficit American Cotton Oil Co.

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1923	Volume, page	10	1927	Volume, page	66
1924	" "	2027	1928	" "	65
1925	" "	82	1929	" "	3051
1926	" "	543	1930	" "	649

[fol. 1391a] P. Ex. 70, Pp. 22 and 23

Beatrice Creamery Company

Incorporated November 20, 1924, in Delaware, to take over all assets of Beatrice Creamery Co., of Iowa, incorporated Mar. 1, 1905, in Iowa. Companies products include cream, butter, milk, ice cream, eggs, and dressed poultry. Most of the butter and other products are sold direct to grocers, hotels, and restaurants, and in some sections direct to consumers. In the principal producing centers company operates its own distributing branches. Brands include Meadow Gold and Holland.

Company and its subsidiaries operate 81 manufacturing plants and cold storage plants, which also act as sales branches; located in the following states:

Colorado	Michigan	Pennsylvania
Connecticut	Missouri	South Dakota
Illinois	Montana	Wisconsin
Indiana	Nebraska	Wyoming
Iowa	Ohio	
Kansas	Oklahoma	

Also operate distributing branches in the following cities:

New York	Norfolk, Va.
Cleveland	Hartford, Conn.
Boston	Springfield, Mass.
Pittsburgh	El Paso, Texas
Washington, D. C.	Wilkes-Barre, Pa.
Worcester, Mass.	Portland, Me.
Richmond, Va.	

Either directly or through subsidiaries company owns all or practically all of the capital stock of each of the following companies:

Pioneer Creamery Co. (Ill.)
Bond Dairy Co. (Ill.)
Charleston Dairy Co. (Ill.)
Holland Butter Co. (Ill.)
Holland Butter Co. (Mass.)
Pioneer Creamery Co. (S. D.)
Hutchinson Ice Cream Co. (Ia.)

The Windsor Farm Dairy Co. (Colo.)
City Park Dairy Co. (Colo.)
The Weber Ice Cream Co. (Mo.)
The White Mountain Creamery Co. (O.)
The White Mountain Dairy Co. (O.)
Detroit Refrigerating Co. (Mich.)
Lackawanna Cold Storage Co. (Pa.)
Tip Top Creamery Co. (Ind.)
Tri-City Realty Co. (Ind.)
The Mowry Creamery Co. (Colo.)
Climax Dairy, Inc. (Colo.)
Iowa Dairy Co. (Ia.)
College City Ice Cream Co. (Ill.)
Central Illinois Ice Cream Co. (Ill.)
Snow & Palmer Co. (Ill.)
Franklin Ice Cream Co. (Neb.)
Kankakee Ice Cream Co. (Ill.)
Wright Ice Cream Co. (Ill.)
Wichita Creamery Co. (Kan.)
Illinois Dairy Co. (Ill.)
Mattoon Ice Cream Co. (Ill.)
Champaign Sanitary Milk Co. (Ill.)
Clinton Dairy Products Co. (Ill.)
Champaign Ice Cream Co. (Ill.)
[fol. 1391b] Capital City Ice Cream Co. (Ill.)
Gibson City Ice Cream Co. (Ill.)
Union Dairy Products Co. (Ill.)
The Davidson Dairy Co. (Colo.)
The Model Dairy Co. (Colo.)
Lambrecht Creamery (Wis.)
Bredehoft Dairy Co. (Ill.)
A. F. Thibodeau Co. (Mich.)
Himes Bros. Dairy Co. (O.)
Keokuk Ice Cream Co. (Ia.)
Callahan Dairy Co. (Ill.)
Harry E. Grafeman Milk Co. (Mo.)
The Sumner Co. (O.)
The Sumner Creamery Co. (O.)
Tullis Ice Cream Co. (Mo.)
Centrox Dairy, Inc. (Ia.)
Omaha Dairy Products Co., Inc. (Neb.)
The Greeley Creamery Co. (Colo.)
Fort Madison Creamery Co. (Ia.)

Financial Record of Beatrice Creamery Company* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Dec. 31; 1920	$46,443,779	1923	$ 862,955	1925	1.87	$9,873,305	1923	8.74
" " 1921	35,238,008	1923	955,510	1927	2.71	9,924,761	1923	9.63
" " 1922	34,142,896	1923	1,176,168	1928	3.44	10,074,825	1923	11.64
" " 1923	46,378,352	1925	990,312	1928	2.14	10,430,036	1923	9.49
Feb. 28, following, 1924	46,894,592	1925	1,009,807	1928	2.15	10,483,710	1925	9.63
" 1925	35,050,915	1930	1,049,747	1930	2.99	10,636,017	1925	9.87
" 1926	33,974,342	1930	1,046,414	1930	3.08	10,891,051	1927	9.61
" 1927	52,744,029	1930	1,221,021	1930	2.31	12,107,588	1928	10.08
" 1928	53,307,111	1930	1,578,659	1930	2.96	14,707,845	1928	10.73
" 1929	83,681,636	1930	2,538,620	1930	3.03	18,169,579	1930	13.97
" 1930	.....	....	.....	....	....	24,408,731	1930	.....

Year ending	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
Dec. 31, 1920	$11,274,456	1923	7.65
" " 1921	10,961,354	1923	8.72
" " 1922	10,872,363	1923	10.82
" " 1923	11,189,649	1923	8.85
Feb. 28, following, 1924	11,607,291	1925	8.70
" " " 1925	11,599,913	1925	9.05
" " " 1926	11,837,586	1927	8.83
" " " 1927	12,979,229	1928	9.41
" " " 1928	15,889,739	1928	9.94
" " " 1929	19,542,263	1930	12.99
" " " 1930	25,932,672	1930	.....

*First incorporated in Iowa March 1, 1905. Present company incorporated November 20, 1924.

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1923 Volume, page 1588
1925 " " 1878
1927 " " 2298
1928 " " 1219
1930 " " 2255

[fol. 1392a] P. Ex. 70, p. 25

United States Dairy Products Corporation

Incorporated in Maryland December 28, 1922. Owns entire capital stock of Woodlawn Farm Dairy Company, which in turn owns entire capital stock of Woodlawn Milk Products Company and on February 1, 1928, acquired business and assets of Brown-Wright Dairy Company, Scranton, Pa.

Corporation also owns Philadelphia Dairy Products Company, which consolidated a number of companies formerly controlled by United States Dairy Products Corporation. Subsidiaries are engaged in sale of milk, ice cream and other dairy products in Philadelphia and suburbs; also in Reading, Harrisburg, Scranton, Wilkes-Barre, Pottstown, Lebanon, Carlisle and Steelton, Pa., Wilmington and Laurel, Del., and other points. Pasteurizing and bottling plants are located in Philadelphia, Scranton, Wilkes-Barre, and Ardmore, Pa., Gloucester, N. J., Allentown, Pa., Atlanta, Ga., Richmond and Norfolk, Va., Asbury Park, N. J. and Brooklyn, N. Y. Two country pasteurizing plants and five condenseries are also owned and operated. Ice cream plants at Philadelphia and Pottstown, Pa., and Newark, N. J., Kingston, Pa., Atlanta, Ga., and Waynesboro, Pa. Company's transportation equipment includes 19 glass lined tank trucks, 8 tractors, 26 trailers, 350 gasoline trucks, 18 electric trucks, 81 miscellaneous motor vehicles, 603 horses and 560 wagons. Number of employees, 2,500.

The company has shown a steady growth since 1922 and has over the period made a number of acquisitions.

 Financial Record of United States Dairy Products Corporation* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1921	$3,563,805***	1924	$278,448***	1924	7.81	******	.....	.....
1922	3,679,306***	1924	293,667***	1924	7.98	******	.....	.....
1923	4,468,772	1928	119,509	1928	2.67	$1,141,900**	1923	10.47
1924	4,695,861	1930	224,597	1930	4.78	1,547,124	1924	14.52
1925	9,059,776	1930	312,000	1930	3.44	4,632,462	1926	6.74
1926	13,929,937	1930	760,978	1930	5.46	5,011,410	1926	15.18
1927	14,858,229	1930	739,439	1930	4.98	6,951,358	1928	10.64
1928	19,281,070	1930	1,169,301	1930	6.06	9,864,850	1928	11.85
1929	24,713,016	1930	1,714,961	1930	6.94	12,307,502	1930	13.93
1930	.....	....	.....	....	....	14,705,582	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1921	******	....	.....
1922	******	....	.....
1923	$2,072,875 **	1923	5.77
1924	2,634,771	1924	8.52
1925	8,846,987	1926	3.53
1926	11,430,679	1926	6.66
1927	15,786,383	1928	4.68
1928	18,376,742	1928	6.36
1929	22,718,047	1930	7.55
1930	27,230,409	1930	.....

*Incorporated in Maryland December 28, 1922.
**Dec. 1, 1922.
***Only Sales and Earnings published.
****Not Reported.

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1926 " " 2350
1928 " " 1685
1930 " " 2312

(Pages 1 and 2 of Petitioner's Exhibit 71 follow, side folios 1394, 1395, and 1396)

[fol. 1394]

PET'S EX. 71

Financial Record Fifteen Non-Defendant Packers, as Reported by Moody's Manual of Industrials

[fol. 1395]

P. Ex. 71, p. 1

Fifteen Non-Defendant Packers

Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928
John Morrell and Company	.....	.....	.....	.....	.....	.....	$78,166	$72,885	.....
Beech-Nut Packing Company	$12,050	$11,610	$14,604	$17,629	$18,963	$21,567	21,821	22,274	$23,368
George A. Hormel and Company	25,324	19,587	13,892	22,649	.....	.....	36,628	34,509	34,832
Roberts and Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	10,605	11,839
Rath Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	31,780
John J. Felin and Company, Incorporated	11,446	8,957	9,326	9,449	10,128	11,395	13,156	12,198	12,268
Brennan Packing Company	9,631	7,592	8,746	9,508	11,511	13,269	14,342	12,386	12,979
Miller and Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	10,123	9,863
Jacob Dold Packing Company	56,512	49,379	48,829	44,780	46,291	57,959	51,026	47,313	51,597
Hygrade Food Products Corporation	.....	.....	.....	.....	.....	4,857	5,836	4,603(1)	8,661
E. Kahn's Sons Company	.....	.....	.....	7,270	8,505	10,903	11,062	11,184	13,992
East Side Packing Company	.....	5,702	7,659	10,094	12,137	17,650	21,171	22,545	22,659
Oscar Mayer and Company	11,187	9,350	10,012	8,591(2)	11,180	13,536	17,737	18,692	21,631
Adolf Gobel, Incorporated	.....	7,052	7,306	7,181	7,293	8,252	8,865	8,287	21,245
Columbus Packing Company	.....	.....	.....	.....	.....	.....	.....	13,271	14,846
Total	$126,150	$119,229	$120,374	$137,151	$126,008	$159,388	$279,810	$300,875	$291,560

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928
John Morrell and Company	.....	.....	.....	.....	.....	.....	$2,014	$1,656	.....
Beech-Nut Packing Company	$500	$726	$1,937	$2,014	$2,188	$2,099	2,012	2,301	$2,769
George A. Hormel and Company	366	410L	749	.....	.....	.....	1,186	466	1,268
Roberts and Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	109	546
Rath Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	1,049
John J. Felin and Company, Incorporated	217	354	304	399	299	257	248	255	381
Brennan Packing Company	214L	80	218	331	405	272	358	46	531
Miller and Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	322	519
Jacob Dold Packing Company	79	1,461L	475L	65	376	334L	383	211L	406
Hygrade Food Products Corporation	.....	.....	.....	.....	.....	102	182	154(1)	217
E. Kahn's Sons Company	.....	.....	.....	331	287	319	362	367	307
East Side Packing Company	.....	5	60	98	160	128	124	144	180
Oscar Mayer and Company	10	116	128	158(2)	158	179	314	106	291
Adolf Gobel, Incorporated	.....	384	348	496	399	218	218	408	563
Columbus Packing Company	.....	.....	.....	.....	.....	.....	.....	117	224
Total	$958	$206L	$3,269	$3,892	$4,272	$3,240	$7,401	$6,240	$9,251
Percent Earned on Sales:									
Weighted Average on Companies Reported	.76%	.17%L	2.72%	3.40%	3.39%	2.03%	2.65%	2.07%	3.17%
Number of Companies Included in Arriving at Percentages	6	8	8	8	8	9	11	14	14

(1) 9½ months.
(2) 11 months.
L—Loss.

PET'S EX. 71

Financial Record Fifteen Non-Defendant Packers, as Reported by Moody's Manual of Industrials

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Fifteen Non-Defendant Packers

Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Sales (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
l and Company	.....	.....	.....	.....	.....	.....	$78,166	$72,885	.....	$94,661
Packing Company	$12,050	$11,610	$14,604	$17,629	$18,963	$21,567	21,821	22,274	$23,368	23,732
lormel and Company	25,3.4	19,587	13,892	22,649	.....	.....	36,628	34,509	34,832	38,220
Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	10,605	11,839	.....
g Company	.....	.....	.....	.....	.....	.....	.....	.....	31,780	33,932
n and Company, Incorporated	11,446	8,957	9,326	9,449	10,128	11,395	13,156	12,198	12,268	13,887
cking Company	9,631	7,592	8,746	9,508	11,511	13,269	14,342	12,386	12,979	13,598
Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	10,123	9,863	10,507
Packing Company	56,512	49,379	48,829	44,780	46,291	57,959	51,026	47,313	51,597	52,909
od Products Corporation	.....	.....	.....	.....	.....	4,857	5,836	4,603(1)	8,661	.....
ons Company	.....	.....	.....	7,270	8,505	10,903	11,062	11,184	13,992	17,802
acking Company	.....	5,702	7,659	10,094	12,137	17,650	21,171	22,545	22,659	21,919
r and Company	11,187	9,350	10,012	8,591(2)	11,180	13,536	17,737	18,692	21,631	23,492
Incorporated	.....	7,052	7,306	7,181	7,293	8,252	8,865	8,287	21,245	46,032
acking Company	.....	.....	.....	.....	.....	.....	.....	13,271	14,846	16,785
	$126,150	$119,229	$120,374	$137,151	$126,008	$159,388	$279,810	$300,875	$291,560	$407,476

Net Earnings Available for Dividends (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
l and Company	.....	.....	.....	.....	.....	.....	$2,014	$1,656	.....	$3,436
Packing Company	$500	$726	$1,937	$2,014	$2,188	$2,099	2,012	2,301	$2,769	2,703
lormel and Company	366	410L	749	.....	.....	.....	1,186	466	1,268	2,217
Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	109	546	501
g Company	.....	.....	.....	.....	.....	.....	.....	.....	1,049	495
n and Company, Incorporated	217	354	304	399	299	257	248	255	381	416
cking Company	214L	80	218	331	405	272	358	46	531	398
Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	322	519	266
Packing Company	79	1,461L	475L	65	376	334L	383	211L	406	248
od Products Corporation	.....	.....	.....	.....	.....	102	182	154(1)	217	.....
ons Company	.....	.....	.....	331	287	319	362	367	307	202
acking Company	.....	5	60	98	160	128	124	144	180	183
r and Company	10	116	128	158(2)	158	179	314	106	291	146
Incorporated	.....	384	348	496	399	218	218	408	563	131
acking Company	.....	.....	.....	.....	.....	.....	.....	117	224	67
	$958	$206L	$3,269	$3,892	$4,272	$3,240	$7,401	$6,240	$9,251	$11,409
Percent Earned on Sales:										
verage on Companies Reported	.76%	.17%L	2.72%	3.40%	3.39%	2.03%	2.65%	2.07%	3.17%	2.68%
Companies Included in Arriving at Percentages.	6	8	8	8	8	9	11	14	14	13

months.
months.
.

[fol. 1396]

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Fifteen Non-Defendant Packers' Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
John Morrell and Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	$17,63
Beech-Nut Packing Company	$6,476	$6,784	$7,434	$9,042	$10,142	$11,187	$11,971	$12,884	$16,454	15,44
George A. Hormel and Company	.....	.....	3,584	3,785	4,359	.....	.....	.....	.....	6,81
Roberts and Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,43
Rath Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,21
John J. Felin and Company, Incorporated	.....	1,839	2,153	2,305	2,478	2,626	2,683	2,803	2,874	3,02
Brennan Packing Company	.....	2,484	2,379	2,500	2,606	2,859	2,980	3,190	3,190	3,59
Miller and Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,94
Jacob Dold Packing Company	9,294	9,146	8,184	8,165	7,969	7,921	6,016	6,520	6,238	6,61
Hygrade Food Products Corporation	.....	.....	.....	.....	.....	.....	.....	.....	1,618	9,69
E. Kahn's Sons Company	.....	.....	.....	.....	.....	.....	4,130	3,890	4,291	3,58
East Side Packing Company	.....	.....	.....	1,151	1,239	1,347	1,419	1,483	1,711	1,83
Oscar Mayer and Company	2,613	2,607	2,591	2,501	2,579	2,625	2,703	2,930	2,271	3,16
Adolf Gobel, Incorporated	.....	.....	.....	.....	.....	.....	930	1,036	1,387	5,85
Columbus Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,18
Total	$18,383	$22,780	$26,325	$29,449	$31,372	$28,565	$32,832	$34,736	$40,034	$91,04
Percent Earned on Stockholders' Investment										
Weighted Average on Companies Reported	2.48%	5.80%L	10.87%	12.00%	13.28%	9.11%	12.24%	9.83%	14.10%	14.02%
Number of Companies Included in Arriving at Percentages	3	5	6	6	6	6	8	8	9	1

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
John Morrell and Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	$23,13
Beech-Nut Packing Company	$8,050	$9,117	$9,200	$11,073	$12,368	$13,572	$15,572	$16,962	$19,860	18,14
George A. Hormel and Company	.....	.....	7,036	6,022	6,629	.....	.....	.....	.....	7,84
Roberts and Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	4,18
Rath Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	8,44
John J. Felin and Company, Incorporated	.....	2,225	2,579	2,634	2,862	2,980	2,991	3,104	3,032	3,18
Brennan Packing Company	.....	2,555	2,424	2,622	2,797	3,122	3,209	3,313	3,231	3,72
Miller and Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	4,95
Jacob Dold Packing Company	19,139	17,871	16,983	17,946	16,405	14,841	14,893	15,505	14,796	15,00
Hygrade Food Products Corporation	.....	.....	.....	.....	.....	.....	.....	.....	3,082	16,84
E. Kahn's Sons Company	.....	.....	.....	.....	.....	.....	4,373	4,087	5,907	5,46
East Side Packing Company	.....	.....	.....	2,074	2,266	2,395	2,451	2,403	2,497	2,51
Oscar Mayer and Company	3,258	2,960	2,962	3,236	3,139	3,332	3,379	3,677	3,964	4,12
Adolf Gobel, Incorporated	.....	.....	.....	.....	.....	.....	2,032	2,022	2,340	9,68
Columbus Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,69
Total	$30,447	$34,728	$41,184	$45,607	$46,466	$40,242	$48,900	$51,073	$58,709	$129,95
Percent Earned on Total Assets										
Weighted Average on Companies Reported	1.92%	.53%L	4.52%	6.94%	9.00%	6.46%	8.22%	6.70%	9.62%	10.09%
Number of Companies Included in Arriving at Percentages	3	5	6	6	6	6	8	8	9	1

L—Loss.

P. Ex. 71, p. 2

Fifteen Non-Defendant Packers' Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1930, as Reported by Moody's Manual of Industrials

Total Stockholders' Investment (Includes Capital Stock and Surplus at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
ll and Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	$17,639	$19,853
Packing Company	$6,476	$6,784	$7,434	$9,042	$10,142	$11,187	$11,971	$12,884	$16,454	15,448	16,910
Hormel and Company	.....	.....	3,584	3,785	4,359	.....	.....	.....	.....	6,818	11,019
d Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,438	2,606
ng Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,219	5,877
n and Company, Incorporated	.....	1,839	2,153	2,305	2,478	2,626	2,683	2,803	2,874	3,029	3,170
cking Company	.....	2,484	2,379	2,500	2,606	2,859	2,980	3,190	3,190	3,594	3,746
Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,942	3,105
Packing Company	9,294	9,146	8,184	8,165	7,969	7,921	6,016	6,520	6,238	6,613	6,842
od Products Corporation	.....	.....	.....	.....	.....	.....	.....	.....	1,618	9,691	8,915
ons Company	.....	.....	.....	.....	.....	.....	4,130	3,890	4,291	3,588	3,507
acking Company	.....	.....	.....	1,151	1,239	1,347	1,419	1,483	1,711	1,831	1,924
r and Company	2,613	2,607	2,591	2,501	2,579	2,625	2,703	2,930	2,271	3,164	3,220
l, Incorporated	.....	.....	.....	.....	.....	.....	930	1,036	1,387	5,851	6,286
Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,183	2,163
l	$18,383	$22,780	$26,325	$29,449	$31,372	$28,565	$32,832	$34,736	$40,034	$91,048	$101,143
rned on Stockholders' Investment											
verage on Companies Reported	2.48%	5.80%L	10.87%	12.00%	13.28%	9.11%	12.24%	9.83%	14.10%	14.02%	.....
Companies Included in Arriving tages	3	5	6	6	6	6	8	8	9	14	.....

Total Assets (at the Beginning of Each Year) (in Thousands)

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
ll and Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	$23,135	$23,487
Packing Company	$8,050	$9,117	$9,200	$11,073	$12,368	$13,572	$15,572	$16,962	$19,860	18,142	19,210
Hormel and Company	.....	.....	7,036	6,022	6,629	.....	.....	.....	.....	7,849	12,901
d Oake, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	4,181	4,313
ng Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	8,448	6,343
n and Company, Incorporated	.....	2,225	2,579	2,634	2,862	2,980	2,991	3,104	3,032	3,189	3,305
cking Company	.....	2,555	2,424	2,622	2,797	3,122	3,209	3,313	3,231	3,721	4,133
Hart, Incorporated	.....	.....	.....	.....	.....	.....	.....	.....	.....	4,950	5,342
Packing Company	19,139	17,871	16,983	17,946	16,405	14,841	14,893	15,505	14,796	15,007	15,325
od Products Corporation	.....	.....	.....	.....	.....	.....	.....	.....	3,082	16,846	16,366
ons Company	.....	.....	.....	.....	.....	.....	4,373	4,087	5,907	5,468	5,152
acking Company	.....	.....	.....	2,074	2,266	2,395	2,451	2,403	2,497	2,516	2,493
r and Company	3,258	2,660	2,962	3,236	3,139	3,332	3,379	3,677	3,964	4,125	4,230
, Incorporated	.....	.....	.....	.....	.....	.....	2,032	2,022	2,340	9,684	12,266
Packing Company	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,693	2,617
l	$30,447	$34,728	$41,184	$45,607	$46,466	$40,242	$48,960	$51,073	$58,709	$129,954	$137,483
nt Earned on Total Assets											
verage on Companies Reported	1.92%	.53%L	4.52%	6.94%	9.00%	6.46%	8.22%	6.70%	9.62%	10.09%	.....
Companies Included in Arriving tages	3	5	6	6	6	6	8	8	9	14	.....

d.

Financial Record of John Morrell & Co., Incorporated,* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Mar. 31, 1927	$78,166,210	1929	$2,013,928	1929	2.58	.....	....	.....
" " 1928	72,885,005	1930	1,656,387	1930	2.27	.....	....	.....
13 mos. ending Nov. 2, 1929	94,660,595	1930	3,435,799	1930	3.62	$17,639,204	1930	17.98
1930	.....	....	.....	.....	....	19,853,021	1930	.....

Year ending	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
Mar. 31, 1927	.....	....	.....
" " 1928	.....	....	.....
13 mos. ending Nov. 2, 1929	23,135,292	1930	13.71
1930	23,487,308	1930	.....

*Incorporated in Delaware November 24, 1928.

Remarks

Engaged principally in meat packing. Also produces and distributes a variety of processed food articles including dairy and by-products. Operates a packing plant at Ottumwa and one at Sioux Falls, S. D.
1930 Price List shows handles:
Orange Marmalade
Plum Pudding

867

Business established in England. United States branch established in New York, 1864 and moved to Ottumwa, Iowa, in 1878.
Operates 10 branch houses.
700 Refrigerator and tank cars.
Capacity 2,500,000 hogs, sheep and cattle per annum.
Employs 4,500.

Beans
"Du Page" Red Kidney
"Yorkshire Farm" Fancy Whole Green Beans
"Riverdale" Cut Green Beans
Condiments
"Exposition" Brand Yellow Mustard
"Exposition" Brand Horseradish
"Yorkshire Farm" Yellow Mustard
"Yorkshire Farm" Horseradish
Peas
Hominy
Pumpkin
Sauer Kraut
Tomatoes
Catsup
Corn
"Yorkshire Farm" Fancy C. G.
"Yorkshire Farm" Fancy Crosby
"Riverdale" Std. Ia. Sugar Beans (dry)
C. H. P. Michigan Pea
Great Northern

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Beech-Nut Packing Co.

Incorporated under the laws of New York, December 29, 1899.

Its business is the curing of meats, preservation of fruits, manufacture of catsup, coffee, pork and beans, spaghetti, mustard, peanut butter, macaroni, jams, jellies, sauces, biscuit dainties, chewing gum and confections, and the marketing of above products.

On November 9, 1927, Company arranged with the United Cigar Stores Co. for a long-term contract under which the latter will promote the sale of Beech-Nut gum and confections in its 3,400 sales outlets throughout the country, and as a condition of which there were sold to United Cigar Stores Co. 50,000 shares of common stock of Beech-Nut Packing Co., at not less than $50 per share, which was later sold by the United Cigar Stores Co. to the Gold Dust Corporation.

Financial Record of Beech-Nut Packing Company* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$12,050,118	1926	$500,149	1926	4.15	$6,475,792**	1920	7.72
1921	11,609,543	1926	726,186	1926	6.25	6,783,868	1924	10.70
1922	14,603,529	1928	1,937,481	1928	13.27	7,433,915	1924	26.06
1923	17,629,271	1928	2,013,695	1928	11.42	9,041,916	1924	22.27
1924	18,963,085	1930	2,187,600	1930	11.54	10,142,424	1924	21.57
1925	21,566,994	1930	2,099,243	1930	9.73	11,186,873	1926	18.77
1926	21,820,762	1930	2,012,222	1930	9.22	11,970,776	1926	16.81
1927	22,273,806	1930	2,301,465	1930	10.33	12,884,216	1926	17.86
1928	23,367,523	1930	2,768,768	1930	11.85	16,453,898	1928	16.83
1929	23,732,089	1930	2,702,953	1930	11,39	15,448,010	1930	17.50
1930	.....	....	.....	....	.....	16,910,499	1930	.....

Year ended Dec. 31	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1920	$8,050,205**	1920	6.21
1921	9,116,973	1924	7.97
1922	9,199,686	1924	21.06
1923	11,073,006	1924	18.19
1924	12,367,836	1924	17.69
1925	13,572,218	1926	15.47
1926	15,571,827	1926	12.92
1927	16,961,085	1928	13.57
1928	19,859,873	1928	13.94
1929	18,141,563	1930	14.90
1930	19,209,673	1930	.....

*Incorporated in New York December 29, 1899.
**Feb. 28, 1920.

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1920 Volume, page 963
1924 " " 857
1926 " " 482
1928 " " 408
1930 " " 511

Financial Record of George A. Hormel & Company,* as Reported by Moody's Manual of Industrials

Year ending Oct. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$25,324,487**	1924	$365,908	1924	1.44	.....	....	.....
1921	19,587,443**	1924	409,768 loss	1924	2.09	.....	....	.....
1922	13,892,463**	1924	748,765	1926	5.39	$3,583,500	1924	20.89
1923	22,649,450	1926	Not Reported.	....	....	3,785,361	1924	.....
1924	Not Reported.	....		....	....	4,359,054	1926	.....
1925		....		....	....	Not Reported.	....	.....
1926	36,627,626	1929	1,185,846	1929	3.24		....	.....
1927	34,509,187	1929	465,816	1929	1.35		....	.....
1928	34,831,664	1929	1,268,261	1929	3.64		....	.....
1929	38,220,212	1930	2,217,397	1930	5.80	6,818,224	1930	32.52
1930	.....	....	.....	....	....	11,018,737	1930	.....

Year ending Oct. 31	Total assets at beginning of each year	Vol.	Percent earned on total assets
1920	.....	....	.....
1921	.....	....	.....
1922	$7,035,984	1924	10.64
1923	6,021,935	1924	
1924	6,628,605	1926	
1925	Not Reported.	....	.....
1926		....	.....
1927		.....	.....
1928		....	.....
1929	7,849,040	1930	28.25
1930	12,900,737	1930	.....

*Business established in 1892. Present Company Incorporated in Delaware September 20, 1928.
**Gross Income.

Remarks

Engaged in pork and beef packing and wholesale provision business. Plant at Austin, Minn.
Operate 14 branch houses.
Employs 2,477.
Handles variety of Fish, Jiffy Malt Syrup.

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1924 Volume, page 336
1926 " " 292
1929 " " 574
1930 " " 207

[fol. 1400]

P. Ex. 71, p. 7

Financial Record of Roberts & Oake, Incorporated,* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Dec. 31, 1927	$10,604,503	1930	$108,815	1930	1.03	.....	....	.....
" " 1928	11,839,231	1930	545,596	1930	4.61	$2,437,500**	1930	20.54
Oct. 31, 1929	Not reported	....	500,794	1930	....	2,605,669***	1930	.....
1930	.....	....	.....	....	....	.....	....	.....

Year ending	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
Dec. 31, 1927	.....	....	.....
" " 1928	.....	.....	.....
Oct. 31, 1929	$4,180,945**	1930	11.98
1930	4,312,862***	1930	.....

*Business established in 1895. Present Company incorporated in Delaware in 1929.
Not reported prior to Dec. 31, 1927.
**As of Dec. 31, 1928.
***As of Oct. 31, 1929.

Remarks

Company is engaged in the processing and sale of pork and certain by-products. Plant located at Chicago. Handles relish and condiments.

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1930 Volume, page 1030

[fol. 1401]

P. Ex. 71, p. 8

Financial Record of Rath Packing Company,* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Mar. 30, 1929	$31,779,905	1930	$1,048,653	1930	3.30	$6,219,062**	1930	7.96
Nov. 2, 1929	33,932,253	1930	495,005	1930	1.46	5,877,347	1930	.....
1930	.....	....	.....	....	....	.....	....	.....

Year ending	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
Mar. 30, 1929	.....	....	.....
Nov. 2, 1929	$8,448,482**	1930	5.86
1930	6,343,121	1930	.....

*Incorporated in Iowa in 1891.
**As of March 30, 1929.

Remarks

Engaged in packing pork and beef products. Owns plant at Waterloo, Iowa.

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1930 Volume, page 2887

Financial Record of John J. Felin & Company, Incorporated,* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$11,445,891	1924	$217,326	1924	1.90	Not reported	....	.....
1921	8,956,717	1924	354,141	1924	3.95	$1,839,284	1924	19.25
1922	9,325,535	1924	304,488	1924	3.27	2,153,263	1924	14.14
1923	9,949,232	1926	398,823	1926	4.01	2,304,585	1924	17.31
1924	10,127,762	1926	298,973	1926	2.95	2,477,602	1926	12.07
1925	11,395,380	1928	257,272	1928	2.26	2,625,680	1926	9.79
1926	13,155,877	1928	248,286	1928	1.89	2,682,762	1928	9.25
1927	12,198,457	1930	255,286	1930	2.09	2,803,198	1928	9.11
1928	12,267,838	1930	380,588	1930	3.10	2,874,104	1928	13.24
1929	13,886,781	1930	416,035	1930	3.00	3,029,056	1930	13.73
1930	.....	....	.....	....	....	3,169,969	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1920	Not reported	....	.....
1921	$2,225,201	1924	15.92
1922	2,579,233	1924	11.80
1923	2,634,246	1924	15.14
1924	2,861,671	1926	10.45
1925	2,980,267	1926	8.63
1926	2,991,065	1928	9.25
1927	3,104,073	1928	8.22
1928	3,032,029	1928	12.55
1929	3,188,969	1930	13.05
1930	3,304,606	1930	.....

*Incorporated in Pennsylvania in 1902.

Remarks

Engaged in pork and beef packing.
Plants in Philadelphia and New York City.
Annual capacity 500,000 hogs.
Employs 500.

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1924 Volume, page 1981
1926 " " 771
1928 " " 235
1930 " " 352

Financial Record of Brennan Packing Company,* as Reported by Moody's Manual of Industrials

Year ended Nov. 30	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$9,630,528	1928	$213,607 loss	1928	2.22 loss	.....	....	.....
1921	7,592,000	1928	79,984	1928	1.05	$2,403,574	1922	3.33
1922	8,746,479	1928	217,977	1928	2.49	2,378,557	1924	9.16
1923	9,508,026	1928	331,383	1928	3.49	2,499,582	1924	13.26
1924	11,511,401	1928	405,352	1928	3.52	2,606,093	1924	15.55
1925	13,269,476	1928	271,938	1928	2.05	2,858,949	1927	9.51
1926	14,341,515	1928	358,421	1928	2.50	2,980,437	1928	12.03
1927	12,385,885	1928	46,205	1928	.37	3,190,018	1928	1.45
1928	12,978,716	1930	530,609	1930	4.09	3,190,031	1930	16.63
1929	13,598,237	1930	397,921	1930	2.93	3,594,117	1930	11.07
1930	.....	....	.....	....	....	3,746,388	1930	.....

Year ended Nov. 30.	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1920	.....	....	.....
1921	$2,554,944	1922	3.13
1922	2,424,421	1924	8.99
1923	2,621,654	1924	12.64
1924	2,796,521	1924	14.49
1925	3,121,636	1927	8.71
1926	3,208,517	1928	11.17
1927	3,313,391	1928	1.39
1928	3,230,757	1930	16.42
1929	3,720,794	1930	10.69
1930	4,133,193	1930	.....

*Business established in 1897. Incorporated in Illinois in 1905.

Remarks

Business consists of the slaughter of hogs and sale of fresh and cured pork products and by-products.

Plant located in Chicago, includes cold storage warehouses with a capacity of 17,000,000 pounds of meat and ice plant with daily capacity of 300 tons of ice.

Also has fertilizer tank house and cooperage depts. Employs 350.

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1924	Volume,	page	412
1922	"	"	488
1927	"	"	216
1928	"	"	177
1930	"	"	272

[fol. 1404] P. Ex. 71, p. 11

Financial Record of Miller & Hart, Incorporated,* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Dec. 31, 1927	$10,123,203	1930	$322,194	1930	3.18	.....	....	.....
Oct. 31, 1928	9,863,069	1930	519,238	1930	5.26	.....	....	.....
" " 1929	10,507,343	1930	266,406	1930	2.54	$2,941,944	1930	9.06
1930	.....	....	.....	....	....	3,104,935	1930	.....

Year ending	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
Dec. 31, 1927	.....	....	.....
Oct. 31, 1928	.....	....	.....
" " 1929	$4,949,814	1930	5.38
1930	5,342,286	1930	....

*Business established in 1882. Present company incorporated in Delaware July 5, 1928.

Remarks

Business consists of the processing of pork and the preparation of certain of its by-products.

Principal productions are smoked hams, bacon and shoulders, lard and sausages. In addition peanut butter, cheese and mince meat and sauerkraut are jobbed to supplement the company's line.

Plant located at Chicago.

Employs 622.

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1930 Volume, page 1949.

[fol. 1405]

P. Ex. 71, p. 12

Financial Record of Jacob Dold Packing Company,* as Reported by Moody's Manual of Industrials

Year ended Oct. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	$56,512,175	1926	$79,019	1926	.14	$9,294,038	1924	.85
1921	49,379,182	1926	1,460,790 loss	1926	2.96 loss	9,145,686	1924	15.97 loss
1922	48,829,329	1928	475,497 loss	1928	.97 loss	8,184,152	1924	5.81 loss
1923	44,779,843	1928	65,383	1928	.15	8,165,462	1924	.81
1924	46,290,788	1930	375,511	1930	.81	7,968,624	1924	4.71
1925	57,958,800	1930	333,735 loss	1930	.58 loss	7,921,162	1926	4.21 loss
1926	51,026,219	1930	383,454	1930	.75	6,016,491	1926	6.37
1927	47,312,878	1930	210,585 loss	1930	.45 loss	6,519,869	1928	3.23 loss
1928	51,597,244	1930	405,732	1930	.79	6,238,326	1928	6.50
1929	52,909,278	1930	248,201	1930	.47	6,613,249	1930	3.75
1930	.....	....	.....	....	.....	6,841,949	1930	.....

*Incorporated in New York August 13, 1888.

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P. Ex. 71, p. 12—Continued

Year ended Oct. 31	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1920	$19,138,858	1924	.41
1921	17,870,948	1924	8.17 loss
1922	16,982,503	1924	2.80 loss
1923	17,945,735	1924	.31
1924	16,404,808	1924	2.29
1925	14,849,620	1926	2.25 loss
1926	14,802,878	1926	2.57
1927	15,505,039	1928	1.36 loss
1928	14,795,951	1928	2.74
1929	15,007,281	1930	1.65
1930	15,324,783	1930	.....

Pickles
"Niagara" Brand Fancy Pickles
"Niagara" Fancy Pickles
"Buffalo" Brand Pickles
"Niagara" Fancy Pickles—in cans
Olives and Pickles
Noodles
Prunes

Index

1924 Volume, page 88
1926 " " 2052
1928 " " 51
1930 " " 77

Remarks

Owns packing houses in Wichita, Kan., and Buffalo, N. Y.

Operates branches throughout the United States and in foreign countries.

1930 Price List shows handles:

Fish
Lake Superior Jumbo Round Ciscoes
Lake Superior Jumbo Flat Herring
New Holland Herring
Pickled Herring
Rolled Mops
Marinated Sardines
Fresh Frozen Fillets
Smoked Fish
Smoked Bloaters
Codfish
V. P. & Salt Fish
Canned Salmon
Sardines
Tuna Fish
Shrimp
Mackerel

Groceries
Coffee
Cocoa
Catsup
Mayonnaise
Dry Beans
Dry Peas
Red Jelly
Pure Jams
Vinegar
"Quenno" Fruit Flavored Syrup
Honey

Canned Vegetables
Carrots
Mixed Vegetables
Mushrooms
Peas
Pimentos
Pumpkin
Succotash
Spinach
Tomatoes
Sweet Potatoes
Sauerkraut
Asparagus
Beans
Beats
Corn

Canned Fruits
Apples
Apricots
Blueberries
Cherries
Fruit Salad
Grapefruit
Plums
Pears
Peaches
Preserves
Pineapple
Raspberries

[fol. 1405a] P. Ex. 71, p. 13

Hygrade Food Products Corporation

Incorporated in New York, December 19, 1927, consolidating 9 concerns, 7 of New York and 2 of Philadelphia, including Blue Ribbon Provision Co., Inc., Hygrade Provision Co., Liberty Provisions Co., Inc., Bernard S. Pincus, Royal Provision Co., Inc., Standard Provisions Co., Inc., and United Beef & Provision Co., Inc.

Manufactures provisions, particularly meat products such as frankfurters, bolognas, salami, cured tongue, canned beef, etc. Properties include land, leaseholds, buildings, machinery, power plants, cold storage facilities, fixtures, equipment, 60 automobile trucks, etc.

On Feb. 11, 1928, Hygrade Food Products Corporation acquired the Bronx Provision Corp. of New York and its subsidiaries, including a chain of stores; later in 1928 acquired Mohawk Sausage Co., Boston, Chris Grozinger Corp., Brooklyn, Hebrew National Food Products Corp., N. Y., Frankly Beef Co., Wilkes-Barre, Pa., and United Beef Co., Hazelton, Pa.

In 1929 acquired 5 packing plants belonging to the Allied Packers, Inc., located at Chicago, Detroit, Buffalo, Wheeling and Topeka, together with current assets, brands and trade marks of latter concerns.

Price Lists indicate handles:

Hic-Ree Sauce.
Chow Mein Noodles.
Chinese Vegetables.
Bean Sprouts.
Sauer Kraut.

Financial Record of Hygrade Food Products Corporation,* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1920	Not reported	....	Not reported	....	....	Not reported	....	.....
1921	" "	....	" "	....	....	" "	....	.....
1922	" "	....	" "	....	....	" "	....	.....
1923	" "	....	" "	....	....	" "	....	.....
1924	" "	....	" "	....	....	" "	....	.....
1925	$4,857,245	1928	$102,281	1928	2.11	" "	....	.....
1926	5,836,138	1930	182,317	1930	3.12	" "	....	.....
1927	4,602,684**	1930	154,490**	1930	3.33	" "	....	.....
1928	8,661,463	1930	216,874	1930	2.50	$1,618,458	1928	13.40
1929	Not reported	....	Not reported	....	....	9,691,227***	1930	.....
1930	.....	....	.....	....	....	8,915,280****	1930	.....

Year ended Dec. 31	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1920	Not reported	....	.....
1921	" "	....	.....
1922	" "	....	.....
1923	" "	....	.....
1924	" "	....	.....
1925	" "	....	.....
1926	" "	....	.....
1927	" "	....	.....
1928	$3,081,629	1928	9.70
1929	16,845,743***	1930	.....
1930	16,365,970 **	1930	.....

*Incorporated in New York December 19, 1927.
**9½ months to Dec. 15, 1927.
***Mar. 29, 1929, Giving effect to merger of Allied Packers, Inc., and new financing.
****Nov. 2, 1929.

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1928 Volume, page 2844
1930 " " 2838

Financial Record of E. Kahn's Sons Company,* as Reported by Moody's Manual of Industrials.

Year ending Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1923	$7,270,354	1926	$330,996	1926	4.55	.....	....	.....
1924	8,504,588	1926	287,421	1926	3.38	.....	....	.....
1925	10,903,032	1928	319,106	1928	2.93	.....	....	.....
1926	11,061,853	1928	361,845	1928	3.27	$4,129,917	1928	8.76
1927	11,183,979	1930	367,130	1930	3.28	3,889,849	1928	9.44
1928	13,991,612	1930	307,072	1930	2.19	4,290,791	1928	7.16
1929	17,801,589	1930	201,560	1930	1.13	3,588,100	1930	5.62
1930	.....	....	.....	....	....	3,507,274	1930	.....

Year ending Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1923	.....	....	.....
1924	.....	....	.....
1925	.....	....	.....
1926	$4,372,584	1928	8.28
1927	4,087,142	1928	8.98
1928	5,906,992	1928	5.20
1928	5,468,164	1930	3.69
1930	5,151,785	1930	.....

*Business established in 1885. Present Company incorporated in Ohio April 25, 1907.

Remarks

Engaged in beef and pork packing.
Packing houses in southern Ohio.
Selling representatives in 35 principal cities in the East, South and New England States.
Plant located at Cincinnati.
Employs 575.

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1926 Volume, page 1588
1928 " " 2047
1930 " " 1511

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Financial Record of East Side Packing Company,* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1921	$5,702,062	1924	$4,599	1924	.01	Not reported.	....	.....
1922	7,658,501	1924	59,799	1924	.08		....	.....
1923	10,093,686	1926	97,643	1926	.97	$1,150,733	1924	8.49
1924	12,136,874	1926	159,577	1926	1.29	1,238,966	1926	12.88
1925	17,650,466	1928	127,653	1928	.72	1,347,314	1926	9.47
1926	21,170,715	1928	124,359	1928	.59	1,418,631	1928	8.77
1927	22,545,249	1930	144,453	1930	.64	1,483,489	1928	9.74
1928	22,658,742	1930	180,287	1930	.80	1,710,845	1928	10.54
1929	21,919,491	1930	182,546	1930	.83	1,830,712	1930	9.97
1930	.....	....	.....	....	....	1,923,891	1930	.....

Year ended Dec. 31.	Total assets at beginning of each year.	Moody Vol.	Percent earned on total assets
1921	Not reported.	....	.....
1922		....	.....
1923	$2,073,762	1924	4.71
1924	2,266,113	1926	7.04
1925	2,394,716	1926	5.33
1926	2,450,504	1928	5.07
1927	2,402,541	1928	6.01
1928	2,496,714	1928	7.22
1929	2,515,565	1930	7.26
1930	2,493,152	1930	.....

*Incorporated in Illinois September 18, 1905.

Remarks

Engaged in slaughtering of cattle, hogs and sheep, curing and manufacturing and sale of packing house products and manufacturing and sale of ice.
Daily capacity of 2,000 hogs, 300 cattle and 200 tons of ice.
Employs 850.
Plant located at East St. Louis, Ill.

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1924 Volume, page 90
1926 " " 759
1928 " " 226
1930 " " 917

[fol. 1409]

P. Ex. 71, p. 17

Financial Record of Oscar Mayer & Company,* as Reported by Moody's Manual of Industrials

Year ending	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
Dec. 31, 1920.....	$11,187,146	1923	$10,202	1923	.01	$2,612,648	1922	.39
" " 1921.....	9,350,038	1924	115,962	1924	1.24	2,606,538	1923	4.45
" " 1922.....	10,012,088	1924	127,630	1924	1.27	2,590,824	1924	4.92
11 mos. ending Nov. 30 (1) 1923.....	8,591,063	1924	158,009	1926	1.84	2,501,286	1924	6.88
Nov. 30, 1924.....	11,180,488	1926	158,261	1926	1.42	2,579,394	1926	6.13
" " 1925.....	13,535,578	1928	178,529	1928	1.32	2,624,867	1926	6.80
" " 1926.....	17,736,937	1928	313,706	1928	1.77	2,702,529	1928	11.61
" " 1927.....	18,692,055	1930	106,009	1930	.57	2,930,481	1928	3.62
" " 1928.....	21,630,513	1930	290,737	1930	1.34	2,271,100	1928	12.80
" " 1929.....	23,491,693	1930	145,647	1930	.62	3,163,626	1930	4.60
" " 1930.....	.....	....	.....	....	....	3,220,262	1930	.....

*Business established in 1883. Present company incorporated in Illinois Jan. 1, 1919.

P. Ex. 71, p. 17—Continued

Year ending,	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
Dec. 31, 1920	$3,257,521	1922	.31
" " 1921	2,960,259	1923	3.92
" " 1922	2,962,263	1924	4.31
11 mos. ending Nov. 30 (1) 1923	3,236,175	1924	5.32
Nov. 30, 1924	3,138,744	1926	5.04
" " 1925	3,332,210	1926	5.36
" " 1926	3,379,474	1928	9.28
" " 1927	3,676,936	1928	2.88
" " 1928	3,964,220	1928	7.33
" " 1929	4,125,390	1930	3.53
" " 1930	4,229,923	1930	.....

Remarks

Distributors of meats, meat products and dairy produce to retail dealers, restaurants, etc. Chicago plant has 8 buildings with facilities for handling 2,000 dressed hogs per day, the manufacture of 200,000 pounds of sausage per week and storage for 3,500,000 pounds of meat in cure and 500,000 pounds of lard.

Owns a slaughtering and packing plant at Madison, Wis., with a daily capacity of 2,500 hogs and 100 cattle and a freezer and cooler space for 7,000,000 pounds of product.

Branches in New York City, Washington, D. C., Detroit, Mich., Cleveland, Ohio, and Madison, Wis.

Employs 900.

Index

1922	Volume, page	111	1926	Volume, page	1655
1923	" "	1225	1928	" "	933
1924	" "	1412	1930	" "	1495

[fol. 1409a] P. Ex. 71, p. 18

Adolf Gobel, Inc.

Incorporated in New York, August 20, 1926, as successor to company of same name founded in 1891. Manufactures fresh and smoked meat of more than 60 different food products and made and sold under "Quality First" trade mark. Plant located in Brooklyn.

On July 12, 1927, acquired controlling interest of Geo. Kern, Inc., doing a packing and wholesale and retail distribution of pork and beef products in New York City. Plant located on 11th Ave., between 40th and 50th Sts.

In 1928, company acquired a majority interest in A. Loffler Provision Co., Inc., and T. T. Keane Co., Inc., which jointly owned a killing plant known as the Washington Abbat-oir Company. Company also acquired the plants and business of B. Heier Sons, Inc., Bronx, N. Y., Hertz Bros., Inc., Milton, Pa., Merkel, Inc., Jamaica, L. I., with a chain of 19 retail stores, C. Lehman Packing Co., Brooklyn, United Sausage Co., Boston; also owns all the stock of the Playland Refreshment Corporation, who operate a cafeteria and lunch stand concession at Playland, Rye Beach, N. Y., and of the Howard Provision Co., operating a stand in West Washington Market, N. Y.

In 1929 acquired over 90% of the ownership of the Jacob E. Decker & Sons of Mason City, Iowa. The latter company operates a large and modern packing plant at Mason City, Iowa; also branch houses in Minneapolis, Minn., Texarkana and Little Rock, Ark., Dallas, Tyler, Beaumont, San Antonio and Houston, Tex., with selling agents in principal cities of the United States.

Price Lists indicate:

Jacob E. Decker & Sons sells Frosted Seafresh Fillets, Spiced Herring and Relish Spread.

Gobel handles Mustard, Horse Radish and Pickles.

Financial Record of Adolf Gobel, Incorporated,* as Reported by Moody's Manual of Industrials

Year ended Dec. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1921	$7,052,262	1928	$383,640**	1928	5.44	Not	....	.....
1922	7,305,501	1928	348,067**	1928	4.76	Re-	....	.....
1923	7,180,577	1928	495,592**	1928	6.90	port-	....	.....
1924	7,292,699	1927	398,818	1927	5.46	ed.	....	.....
1925	8,251,609	1928	218,443	1928	2.65	.....	....	.....
1926	8,865,135	1928	218,311	1928	2.46	$930,203	1927	23.47
1927	8,287,382	1929	408,465	1929	4.93	1,036,245	1928	39.42
1928	21,244,820	1930	563,332	1930	2.65	1,386,572	1928	40.63
1929	46,032,417	1930	131,299	1930	0.29	5,850,794	1930	2.24
1930	.....	....	.....	....	....	8,285,972	1930	.....

*Incorporated in New York August 20, 1926.
**Before Federal Income Taxes.

Year ended Dec. 31.	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1921	Not	....	.....
1922	Re-	....	.....
1923	port-	....	.....
1924	ed.	....	.....
1925	.....	....	.....
1926	$2,032,226	1927	10.74
1927	2,021,799	1928	20.20
1928	2,339,664	1928	24.17
1929	9,683,654	1930	1.36
1930	12,265,503	1930	.....

Index

1927 Volume, page 1032
1928 " " 2002
1929 " " 1758
1930 " " 2820

[fol. 1411]

P. Ex. 71, p. 20

Financial Record of Columbus Packing Company,* as Reported by Moody's Manual of Industrials

Year ending Oct. 31	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year)	Moody Vol.	Percent earned on total stockholders' investment
1927	$13,270,674	1930	$117,024	1930	.88	.....	....	.....
1928	14,845,808	1930	224,361	1930	1.51	.....	....	.....
1929	16,785,460	1930	67,241	1930	.40	$2,183,105	1930	3.08
1930	.....	....	.....	....	....	2,163,346	1930	.....

Year ending Oct. 31	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
1927	.....	....	.....
1928	.....	....	.....
1929	$2,693,062	1930	2.50
1930	2,616,975	1930	.....

*Business established in 1906. Present company incorporated in Ohio April 30, 1923.

Remarks

Engaged in the business of meat packing and by-products.

Plant located at South Columbus, Ohio. Daily capacity 100 cattle, 2,500 hogs. Annual production 150,000,000 pounds of meat and by-products.

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1930 Volume, page 873

(Petitioner's Exhibits 72 and 73 follow, side folios 1412, 1413, 1414, and 1415)

[Vol. 1412]

PEP's EXH. 72

Financial Record Four Defendant Packers

[Vol. 1413]

Four Defendant Packers Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1929 Inclusive

	Swift and Company		Armour and Company		Wilson & Co.		The Cudahy Packing Co.		Combine
Sales (in thousands)		Percent earned		Percent earned		Percent earned		Percent earned	
1920	$1,052,039	.49	$1,260,280 (5)	.19	$370,000	.80 L	$288,802	.22	$2,971,121
1921	735,040	1.06 L	842,407 (5)	5.12 L	250,000	3.38 L	173,695	.90 L	2,001,142
1922	655,681	1.99	864,716 (1&5)	1.17 L	225,000	1.00 L	160,164	.77	1,906,561
1923	761,369	1.73	882,421 (5)	1.78	275,000	.89	190,290	1.06	2,109,080
1924	785,221	1.80	875,409	2.08	236,000	.54	203,756	1.65	2,100,386
1925	892,102	1.72	970,388	1.49	271,937	.46	224,491	1.24	2,358,918
1926	953,797	1.64	808,648 (2)	1.01	248,127 (2)	.99	231,727	1.75	2,242,299
1927	931,486	1.31	961,132	.06	284,105	.05	233,325	1.01	2,410,048
1928	972,940	1.52	972,799	1.16	295,744	.75	251,156	1.02	2,492,639
1929	1,035,263	1.26	1,004,196	.98	308,805	.75	267,960	.94	2,616,224
Net Earnings available for dividends (in thousands)									
1920	$5,170	....	$2,365 (5)	....	$2,941 L(3)	....	$ 624	....	$5,218
1921	7,812 L	....	43,158 L(5)	....	8,462 L(3)	....	1,570 L	....	61,002 L
1922	13,049	....	10,175 L(1&5)	....	2,243 L(3)	....	1,232	....	1,863
1923	13,185	....	15,691 (5)	....	2,451 (3)	....	2,010	....	33,337
1924	14,126	....	18,310	....	1,292	....	3,352	....	37,080
1925	15,379	....	14,452	....	1,254	....	2,792	....	33,877
1926	15,645	....	8,148 (2)	....	2,461 (2)	....	4,053	....	30,307
1927	12,202	....	538	....	147	....	2,354	....	15,241
1928	14,813	....	11,326	....	2,208	....	2,567	....	30,914
1929	13,077	....	9,811	....	2,305	....	2,513	....	27,706
Total stockholders' investment (includes capital stock and surplus at the beginning of each year) (in thousands)									
1920	$238,382	2.17	$265,096 (5)	.89	$51,397	5.72 L	$35,421	1.76	$590,296
1921	231,552	3.37 L	284,653 (5)	15.16 L	47,055	18.40 L	30,923	5.08 L	594,183
1922	211,740	6.16	255,457 (5)	3.40 L	37,458	5.99 L	29,353	4.20	534,008
1923	212,789	6.20	298,456 (5)	5.26	48,755	5.03	30,006	6.70	590,006
1924	213,974	6.60	278,587	6.57	50,249	2.57	30,859	10.86	573,669
1925	216,100	7.12	286,921	5.04	45,664	2.75	32,943	8.48	581,628
1926	219,479	7.13	286,476	3.41	58,975	5.01	37,868	10.70	602,798
1927	223,124	5.47	286,519	.19	62,145	.24	39,302	5.91	611,590
1928	223,327	6.63	277,241	4.09	62,293	3.54	39,877	6.44	602,738
1929	226,140	5.78	276,956	3.54	65,500	3.52	40,166	6.26	608,762
Total assets (at the beginning of each year) (in thousands)									
1920	$489,540	1.06	$593,628 (5)	.40	$127,007	2.32 L	$92,448	.67	$1,302,623
1921	450,906	1.73 L	632,863 (5)	6.82 L	114,206	7.41 L	81,925	1.92 L	1,279,900
1922	361,844	3.61	562,284 (5)	1.54 L	102,160	2.20 L	61,762	1.99	1,088,014
1923	355,044	3.71	540,470 (5)	2.90	117,130	2.09	71,099	2.83	1,083,743
1924	337,864	4.18	508,819	3.59	121,521	1.06	71,510	4.69	1,039,714
1925	337,791	4.55	493,295	2.93	119,017 (4)	1.05	70,467	3.96	1,020,570
1926	342,296	4.57	485,711	2.01	98,012	3.01	72,507	5.59	998,526
1927	342,015	3.57	481,825	.11	98,036	.15	74,346	3.17	996,222
1928	337,208	4.39	471,241	2.40	96,356	2.29	76,376	3.36	981,183
1929	347,597	3.76	448,549	2.19	97,068	2.37	82,556	3.04	975,770
1930	351,252	....	452,314	....	98,049	....	79,561	....	981,176

L Loss.
(1) 61 weeks.
(2) 10 months.
(3) Before providing for depreciation.
(4) August 27, 1924.
(5) Including Morris & Co.

PET'S EXH. 72

Financial Record Four Defendant Packers

Four Defendant Packers Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1929 Inclusive

	Swift and Company		Armour and Company		Wilson & Co.		The Cudahy Packing Co.		Combined	
n thousands)		Percent earned		Percent earned		Percent earned		Percent earned		Percent earned
0	$1,052,039	.49	$1,260,280 (5)	.19	$370,000	.80 L	$288,802	.22	$2,971,121	.18
1	735,040	1.06 L	842,407 (5)	5.12 L	250,000	3.38 L	173,695	.90 L	2,001,142	3.05 L
2	655,681	1.99	864,716 (1&5)	1.17 L	225,000	1.00 L	160,164	.77	1,905,561	.10
3	761,369	1.73	882,421 (5)	1.78	275,000	.89	190,290	1.06	2,109,080	1.58
4	785,221	1.80	875,409	2.08	236,000	.54	203,756	1.65	2,100,386	1.77
5	892,102	1.72	970,388	1.49	271,937	.46	224,491	1.24	2,358,918	1.44
6	953,797	1.64	808,648 (2)	1.01	248,127 (2)	.99	231,727	1.75	2,242,299	1.35
7	931,486	1.31	961,132	.06	284,105	.05	233,325	1.01	2,410,048	.63
8	972,940	1.52	972,799	1.16	295,744	.75	251,156	1.02	2,492,639	1.24
9	1,035,263	1.26	1,004,196	.98	308,805	.75	267,960	.94	2,616,224	1.06
rnings available for dividends (in nds)										
0	$5,170	....	$2,365 (5)	....	$2,941 L(3)	....	$ 624	....	$5,218	....
1	7,812 L	....	43,158 L(5)	....	8,462 L(3)	....	1,570 L	....	61,002 L	....
2	13,049	....	10,175 L(1&5)	....	2,243 L(3)	....	1,232	....	1,863	....
3	13,185	....	15,691 (5)	....	2,451 (3)	....	2,010	....	33,337	....
4	14,126	....	18,310	....	1,292	....	3,352	....	37,080	....
5	15,379	....	14,452	....	1,254	....	2,792	....	33,877	....
6	15,645	....	8,148 (2)	....	2,461 (2)	....	4,053	....	30,307	....
7	12,202	....	538	....	147	....	2,354	....	15,241	....
8	14,813	....	11,326	....	2,208	....	2,567	....	30,914	....
9	13,077	....	9,811	....	2,305	....	2,513	....	27,706	....
tockholders' investment (includes l stock and surplus at the beginning h year) (in thousands)										
0	$238,382	2.17	$265,096 (5)	.89	$51,397	5.72 L	$35,421	1.76	$590,296	.88
1	231,552	3.37 L	284,653 (5)	15.16 L	47,055	18.40 L	30,923	5.08 L	594,183	10.27 L
2	211,740	6.16	255,457 (5)	3.40 L	37,458	5.99 L	29,353	4.20	534,008	.35
3	212,789	6.20	298,456 (5)	5.26	48,755	5.03	30,006	6.70	590,006	5.65
4	213,974	6.60	278,587	6.57	50,249	2.57	30,859	10.86	573,669	6.46
5	216,100	7.12	286,921	5.04	45,664	2.75	32,943	8.48	581,628	5.82
6	219,479	7.13	286,476	3.41	58,975	5.01	37,868	10.70	602,798	5.03
7	223,124	5.47	286,519	.19	62,145	.24	39,802	5.91	611,590	2.49
8	223,327	6.63	277,241	4.09	62,293	3.54	39,877	6.44	602,738	5.13
9	226,140	5.78	276,956	3.54	65,500	3.52	40,166	6.26	608,762	4.55
ets (at the beginning of each year) ousands)										
0	$489,540	1.06	$593,628 (5)	.40	$127,007	2.32 L	$92,448	.67	$1,302,623	.40
1	450,906	1.73 L	632,863 (5)	6.82 L	114,206	7.41 L	81,925	1.92 L	1,279,900	4.77 L
2	361,844	3.61	562,284 (5)	1.54 L	102,160	2.20 L	61,762	1.99	1,088,014	.17
3	355,044	3.71	540,470 (5)	2.90	117,130	2.09	71,099	2.83	1,083,743	3.08
4	337,864	4.18	508,819	3.59	121,521	1.06	71,510	4.69	1,039,714	3.57
5	337,791	4.55	493,295	2.93	119,017 (4)	1.05	70,467	3.96	1,020,570	3.32
6	342,296	4.57	485,711	2.01	98,012	3.01	72,507	5.59	998,526	3.04
7	342,015	3.57	481,825	.11	98,036	.15	74,346	3.17	996,222	1.53
8	337,208	4.39	471,241	2.40	96,356	2.29	76,376	3.36	981,183	3.16
9	347,597	3.76	448,549	2.19	97,068	2.37	82,556	3.04	975,770	2.82
	351,252	....	452,314	....	98,049	....	79,561	....	981,176	....

oss.
51 weeks.
10 months.
Before providing for depreciation.
August 27, 1924.
Including Morris & Co.

[fol. 1414]

Pet's Ex. 73

Recapitulation of Financial Record on Four Classes of Companies

[fol. 1415]

Pet's Ex. 73 p. 1

Recapitulation of Financial Record on Four Classes of Companies

Recapitulation of Financial Record on Four Classes of Companies Showing Sales, Earnings and Percentage of Earnings to Sales, Invested C

		1920		1921		1922		1923		1924		1925		1
Sales (in thousands)														
Eight food companies	(4)	$203,671	(6)	$206,664	(6)	$200,345	(6)	$228,099	(6)	$323,013	(6)	$356,874	(6)	
Twelve grocery chains	(5)	419,762	(6)	362,824	(7)	436,808	(7)	542,857	(8)	638,582	(10)	841,234	(11)	1
Fifteen non-defendant packers	(6)	126,150	(8)	119,229	(8)	120,374	(9)	137,151	(8)	126,008	(9)	159,388	(11)	
Four defendant packers	(4)	2,971,121	(4)	2,001,142	(4)	1,905,561	(4)	2,109,080	(4)	2,100,386	(4)	2,358,918	(4)	2
Net earnings available for dividends (in thousands)														
Eight food companies	(6)	$8,173	(8)	$14,573	(8)	$27,259	(7)	$31,378	(8)	$39,033	(8)	$45,839	(8)	
Twelve grocery chains	(4)	5,610	(3)	1,603	(6)	10,162	(6)	12,824	(7)	18,097	(10)	27,487	(11)	
Fifteen non-defendant packers	(6)	958	(8)	206 L	(8)	3,269	(8)	3,892	(8)	4,272	(9)	3,240	(11)	
Four defendant packers	(4)	5,218	(4)	61,002 L	(4)	1,863	(4)	33,337	(4)	37,080	(4)	33,877	(4)	
Total stockholders' investment (includes capital stock and surplus at the beginning of each year, (in thousands)														
Eight food companies	(4)	$163,055	(6)	$191,968	(6)	$192,584	(7)	$205,765	(8)	$191,151	(8)	$208,843	(8)	
Twelve grocery chains	(3)	42,940	(4)	57,171	(4)	66,012	(4)	75,766	(5)	98,808	(6)	116,081	(7)	
Fifteen non-defendant packers	(3)	18,383	(5)	22,780	(6)	26,325	(7)	29,449	(7)	31,372	(6)	28,565	(8)	
Four defendant packers	(4)	590,296	(4)	594,183	(4)	534,008	(4)	590,006	(4)	573,669	(4)	581,628	(4)	
Total assets at the beginning of each year (in thousands)														
Eight food companies	(4)	$212,404	(6)	$271,050	(6)	$257,149	(7)	$267,852	(8)	$251,451	(8)	$276,427	(8)	
Twelve grocery chains	(3)	66,350	(4)	69,526	(4)	80,587	(4)	91,593	(5)	116,565	(6)	138,957	(7)	
Fifteen non-defendant packers	(3)	30,447	(5)	34,728	(6)	41,184	(7)	45,607	(7)	46,466	(6)	40,242	(8)	
Four defendant packers	(4)	1,302,623	(4)	1,279,900	(4)	1,088,014	(4)	1,083,743	(4)	1,039,714	(4)	1,020,570	(4)	
Percent earned on sales (weighted average on companies reported)														
Eight food companies	(4)	2.73	(6)	5.73	(6)	9.34	(6)	8.45	(6)	7.88	(6)	8.84	(6)	
Twelve grocery chains	(4)	1.37	(3)	2.59	(6)	2.90	(6)	2.86	(7)	3.35	(10)	3.27	(11)	
Fifteen non-defendant packers	(6)	.76	(8)	.17 L	(8)	2.72	(8)	3.40	(8)	3.39	(9)	2.03	(11)	
Four defendant packers	(4)	.18	(4)	3.05 L	(4)	.10	(4)	1.58	(4)	1.77	(4)	1.44	(4)	
Percent earned on stockholders' investment (weighted average on companies reported)														
Eight food companies	(4)	4.19	(6)	6.98	(6)	13.47	(6)	17.38	(8)	20.42	(8)	21.95	(8)	
Twelve grocery chains	(3)	11.50	(2)	15.38	(3)	20.67	(3)	21.90	(4)	24.71	(6)	21.42	(7)	
Fifteen non-defendant packers	(3)	2.48	(5)	5.80 L	(6)	10.87	(6)	12.00	(6)	13.28	(6)	9.11	(8)	
Four defendant packers	(4)	.88	(4)	10.27 L	(4)	.35	(4)	5.65	(4)	6.46	(4)	5.82	(4)	
Percent earned on total assets (weighted average on companies reported)														
Eight food companies	(4)	3.22	(6)	4.95	(6)	10.09	(6)	13.76	(8)	15.52	(8)	16.58	(8)	
Twelve grocery chains	(3)	7.44	(2)	12.51	(3)	17.41	(3)	17.99	(4)	20.35	(6)	17.89	(7)	
Fifteen non-defendant packers	(3)	1.92	(5)	.53 L	(6)	4.52	(6)	6.94	(6)	9.00	(6)	6.46	(8)	
Four defendant packers	(4)	.40	(4)	4.77	(4)	.17	(4)	3.08	(4)	3.57	(4)	3.32	(4)	

NOTE: Figures in parentheses indicate the number of companies included.
L—Loss.

888b

Per's Ex. 73

Recapitulation of Financial Record on Four Classes of Companies

Per's Ex. 73 p. 1

Recapitulation of Financial Record on Four Classes of Companies

...es of Companies Showing Sales, Earnings and Percentage of Earnings to Sales, Invested Capital and Total Assets, Period 1920 to 1929 Inclusive

1922		1923		1924		1925		1926		1927		1928		1929		1930	
(6)	$200,345	(6)	$228,099	(6)	$323,013	(6)	$356,874	(6)	$417,214	(6)	$466,935	(6)	$631,111	(5)	$864,920		.....
(7)	436,808	(7)	542,857	(8)	638,582	(10)	841,234	(11)	1,017,803	(12)	1,339,630	(12)	1,776,677	(12)	2,114,279		.....
(8)	120,374	(9)	137,151	(8)	126,008	(9)	159,388	(11)	279,810	(14)	300,875	(14)	291,560	(13)	407,476		.....
(4)	1,905,561	(4)	2,109,080	(4)	2,100,386	(4)	2,358,918	(4)	2,242,299	(4)	2,410,048	(4)	2,492,639	(4)	2,616,224		.....
(8)	$27,259	(7)	$31,378	(8)	$39,033	(8)	$45,839	(8)	$64,178	(8)	$68,471	(8)	$85,031	(7)	$93,665		.....
(6)	10,162	(6)	12,824	(7)	18,007	(10)	27,487	(11)	33,333	(12	39,141	(12)	49,539	(12)	58,745		.....
(8)	3,269	(8)	3,892	(8)	4,272	(9)	3,240	(11)	7,401	(14)	6,240	(14)	9,251	(14)	11,409		.....
(4)	1,863	(4)	33,337	(4)	37,080	(4)	33,877	(4)	30,307	(4)	15,241	(4)	30,914	(4)	27,706		.....
(6)	$192,584	(7)	$205,765	(8)	$191,151	(8)	$208,843	(8)	$244,982	(8)	$284,785	(8)	$320,606	(8)	$416,885	(8)	$548,976
(4)	66,012	(4)	75,766	(5)	98,808	(6)	116,081	(7)	134,955	(8)	157,286	(10)	196,665	(11)	266,509	(12)	325,440
(6)	26,325	(7)	29,449	(7)	31,372	(6)	28,565	(8)	32,832	(8)	34,736	(9)	40,034	(15)	91,048	(15)	101,143
(4)	534,008	(4)	590,006	(4)	573,669	(4)	581,628	(4)	602,798	(4)	611,590	(4)	602,738	(4)	608,762		.....
(6)	$257,149	(7)	$267,852	(8)	$251,451	(8)	$276,427	(8)	$341,553	(8)	$388,032	(8)	$432,139	(8)	$577,027	(8)	$741,322
(4)	80,587	(4)	91,593	(5)	116,565	(6)	138,957	(7)	165,595	(8)	197,983	(10)	255,508	(11)	338,439	(12)	404,605
(6)	41,184	(7)	45,607	(7)	46,466	(6)	40,242	(8)	48,900	(8)	51,073	(9)	58,709	(15)	129,954	(15)	137,483
(4)	1,088,014	(4)	1,083,743	(4)	1,039,714	(4)	1,020,570	(4)	998,526	(4)	996,222	(4)	981,183	(4)	975,770	(4)	981,176
(6)	9.34	(6)	8.45	(6)	7.88	(6)	8.84	(6)	11.65	(6)	10.78	(6)	10.21	(5)	7.47		.....
(6)	2.90	(6)	2.86	(7)	3.35	(10)	3.27	(11)	3.27	(12)	2.92	(12)	2.79	(12)	2.78		.....
(8)	2.72	(8)	3.40	(8)	3.39	(9)	2.03	(11)	2.65	(14)	2.07	(14)	3.17	(13)	2.68		.....
(4)	.10	(4)	1.58	(4)	1.77	(4)	1.44	(4)	1.35	(4)	.63	(4)	1.24	(4)	1.06		.....
(6)	13.47	(6)	17.38	(8)	20.42	(8)	21.95	(8)	26.20	(8)	24.04	(8)	26.52	(7)	25.24		.....
(3)	20.67	(3)	21.90	(4)	24.71	(6)	21.42	(7)	20.97	(8)	22.12	(10)	23.71	(11)	21.23		.....
(6)	10.87	(6)	12.00	(6)	13.28	(6)	9.11	(8)	12.24	(8)	9.83	(9)	14.10	(14)	14.02		.....
(4)	.35	(4)	5.65	(4)	6.46	(4)	5.82	(4)	5.03	(4)	2.49	(4)	5.13	(4)	4.55		.....
(6)	10.09	(6)	13.76	(8)	15.52	(8)	16.58	(8)	18.79	(8)	17.65	(8)	19.68	(7)	18.96		.....
(3)	17.41	(3)	17.99	(4)	20.35	(6)	17.89	(7)	17.09	(8)	17.57	(10)	18.25	(11)	16.72		.....
(6)	4.52	(6)	6.94	(6)	9.00	(6)	6.46	(8)	8.22	(8)	6.70	(9)	9.62	(14)	10.09		.....
(4)	.17	(4)	3.08	(4)	3.57	(4)	3.32	(4)	3.04	(4)	1.53	(4)	3.16	(4)	2.82		.....

[fol. 1416] PET. EX. 74

H. C. Bohack Co., Inc.

Year	Stores	Sales	Net earnings	Fresh meat departments	Meat sales
1920....	152	$11,988,252.67	$277,886.00	61	$2,358,767.00
1921....	186	12,493,475.50	406,203.00	101	3,264,127.00
1922....	225	15,317,284.28	383,203.00	137	4,561,386.00
1923....	254	16,673,190.07	430,102.00	154	4,577,496.00
1924....	324	18,703,468.62	423,402.00	190	5,048,713.00
1925....	352	19,395,241.36	338,711.00	204	5,147,293.00
1926....	391	21,159,069.14	272,695.00	201	5,195,025.00
1927....	417	24,733,553.69	579,698.00	208	5,981,446.90
1928....	461	26,168,158.17	494,149.00	216	6,171,458.00
1929....	504	28,865,869.30	895,709.00	230	6,184,085.00

[fol. 1417] PETITIONER'S EX. 85

Summary Swift & Company's Competitors in Branch House Territories

[fol. 1418] P. Ex. 85, p. 2

Summary of Swift & Company's Competitors in Branch House Territories

Swift & Company Branch Territory:	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Abilene, Texas	12	57	12	69	35
Akron, Ohio	8	27	37	64	36
Albany, N. Y.	18	10	20	30	21
Albuquerque, N. Mex.	22	5	11	16	23
Alexandria, La.	26	25	6	31	11
Allentown, Pa.	13	16	36	52	21
Altoona, Pa.	9	18	10	28	15
Amarillo, Tex.	19	95	15	110	111
Americus, Ga.	7	.....	9	9	13
Anderson, S. C.	12	3	5	8	7
Ann Arbor, Mich.	5	14	19	33	13
Anniston, Ala.	12	3	11	14	13
Appleton, Wis.	9	11	16	27	16
Ardmore, Okla.	10	6	4	10	6
Asbury Park, N. J.	9	2	29	31	18
Asheville, N. C.	28	18	12	30	32
Ashland, Wis.	9	8	7	15	23
Astoria, Oreg.	4	2	10	12	7
Atlanta, Ga.	56	24	27	51	43
Atlantic City, N. J.	17	14	41	55	54
Augusta, Ga.	40	12	22	34	23
Augusta, Me.	12	31	16	47	18
Austin, Tex.	10	58	18	76	28
Bakersfield, Calif.	10	21	12	33	13
Baltimore, Md.	43	41	23	64	41
Bangor, Me.	20	11	15	26	13
Bath, Me.	24	.....	15	15	10
Baton Rouge, La.	20	4	5	9	8
Battle Creek, Mich.	7	6	15	21	23
Bay City, Mich.	5	17	11	28	18

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Bayonne, N. J.	10	1	23	24	22
Beaumont, Tex.	12	10	3	13	15
Bellingham, Wash.	4	5	4	9	14
Berlin, N. H.	10	6	11	17	13
Bethlehem, Pa.	12	10	30	40	23
Biddeford, Me.	18	4	22	26	22
Billings, Mont.	9	7	11	18	24
Birmingham, Ala.	44	12	19	31	35
Boise, Idaho	9	39	10	49	25
Boston, Mass.	65	128	42	170	88
Bradford, Pa.	23	1	19	20	44
Brainerd, Minn.	14	2	12	14	36
Brattleboro, Vt.	9	.....	8	8	5
Bridgeport, Conn.	19	17	28	45	40
Bridgeton, N. J.	11	10	17	27	17
Brockton, Mass.	18	14	33	47	23
[fol. 1419]	P. Ex. 85, p. 3				
Brownsville, Tex.	13	11	9	20	14
Brunswick, Ga.	9	1	6	7	9
Buffalo, N. Y.	39	43	22	65	57
Burlington, N. C.	7	1	9	10	6
Burlington, Vt.	11	9	4	13	17
Butte, Mont.	8	11	6	17	43
Calexico, Calif.	10	3	8	11	10
Calumet City, Ill.	12	4	16	20	17
Canton, Ohio	12	15	26	41	42
Cedar Rapids, Iowa	6	6	8	14	35
Charleston, S. C.	17	8	11	19	8
Charleston, W. Va.	10	9	13	22	12
Charlotte, N. C.	31	5	17	22	15
Charlottesville, Va.	14	2	13	15	15
Chattanooga, Tenn.	13	9	16	25	43
Chester, Pa.	9	13	13	26	22
Chester, S. C.	26	.....	13	13	10
Chicago, Ill.	78	881	13	894	317
Cincinnati, Ohio	32	36	8	44	65
Clarksburg, W. Va.	26	57	15	72	24
Cleveland, Ohio	26	92	37	129	75
Clarksdale, Miss.	9	4	9	13	14
Clinton, Mass.	9	6	14	20	10
Colorado Springs, Colo.	10	7	8	15	26
Columbia, S. C.	23	8	13	21	14
Columbus, Ga.	30	14	8	22	18
Concord, N. H.	8	1	10	11	13
Corning, N. Y.	6	36	10	46	15
Corpus Christi, Tex.	13	7	9	16	14
Cumberland, Md.	12	36	19	55	13
Dallas, Tex.	9	36	22	58	81
Danbury, Conn.	7	4	17	21	12
Danville, Va.	23	16	7	23	9
Daytona Beach, Fla.	13	9	8	17	8
Denison, Tex.	13	30	13	43	35
Denver, Colo.	16	27	16	43	[illegible]
Des Moines, Iowa	9	12	9	21	39
Detroit, Mich.	70	105	21	126	69
Donaldsonville, La.	15	1	6	7	6
Dothan, Ala.	15	2	6	8	3
Dover, N. H.	17	8	18	[illegible]	11

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Dover, N. J.	11	.....	19	19	12
Dublin, Ga.	14	1	7	8	3
Duluth, Minn.	10	28	4	32	45
Durham, N. C.	15	3	7	10	12
East St. Louis, Ill.	8	11	14	25	27
Easton, Pa.	7	3	17	20	16
Elizabeth, N. J.	17	5	29	34	20
Elmira, N. Y.	16	38	10	48	33
[fol. 1429]	P. Ex. 85, p. 4				
El Paso, Tex.	21	17	8	25	21
Erie, Pa.	27	14	14	28	40
Escanaba, Mich.	7	4	8	12	8
Everett, Wash.	7	9	9	18	16
Fall River, Mass.	20	21	15	36	22
Fargo, N. Dak.	17	7	5	12	28
Fayetteville, N. C.	20	5	14	19	22
Fitchburg, Mass.	9	6	19	25	15
Flint, Mich.	10	8	16	24	28
Florence, S. C.	27	4	5	9	11
Flushing, N. Y.	6	9	22	31	53
Fond du Lac, Wis.	7	11	15	26	12
Fort Smith, Ark.	18	23	12	35	26
Fort Wayne, Ind.	11	8	12	20	14
Fort Worth, Tex.	14	23	19	42	53
Gadsden, Ala.	22	12	21	33	29
Gainesville, Ga.	13	1	8	9	11
Galesburg, Ill.	13	9	23	32	22
Galveston, Tex.	9	4	7	11	15
Gardner, Mass.	10	.....	12	12	9
Gary, Ind.	11	6	20	26	19
Gastonia, N. C.	17	5	8	13	16
Geneva, N. Y.	7	6	15	21	18
Glens Falls, N. Y.	7	11	11	22	14
Globe, Ariz.	6	2	4	6	7
Gloucester, Mass.	7	1	7	8	9
Goldsboro, N. C.	18	4	4	8	6
Grand Junction, Colo.	6	10	2	12	17
Grand Rapids, Mich.	14	30	20	50	33
Great Falls, Mont.	6	8	5	13	20
Green Bay, Wis.	13	16	19	35	14
Greenfield, Mass.	13	6	12	18	10
Greensboro, N. C.	13	7	9	16	19
Greenville, Miss.	12	3	9	12	13
Greenville, N. C.	14	1	8	9	8
Greenville, S. C.	21	6	7	13	10
Greenwood, Miss.	11	3	12	15	14
Gulfport, Miss.	8	4	6	10	8
Hamlet, N. C.	22	4	11	15	9
Hartford, Conn.	20	45	42	87	52
Hattiesburg, Miss.	11	5	12	17	12
Haverstraw, N. Y.	17	5	23	28	20
Hazleton, Pa.	12	19	22	41	41
Helena, Ark.	14	5	7	12	14
Helena, Mont.	4	7	7	14	5
Henderson, N. C.	12	4	9	13	6
Hickory, N. C.	12	4	7	11	4

[fol. 1421] P. Ex. 85, p. 5

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
High Point, N. C.	11	6	9	15	10
Holyoke, Mass.	4	12	12	24	14
Hoquiam, Wash.	7	7	10	17	14
Hornell, N. Y.	9	13	12	25	9
Houlton, Me.	7	6	6	12	7
Houston, Tex.	28	15	6	21	42
Huntsville, Ala.	30	3	19	22	10
Indiana Harbor, Ind.	11	4	18	22	13
Indianapolis, Ind.	15	15	26	41	18
Ironwood, Mich.	8	4	5	9	15
Ishpeming, Mich.	16	13	10	23	16
Ithaca, N. Y.	7	2	34	36	16
Jackson, Mich.	15	14	22	36	22
Jackson, Miss.	19	3	17	20	22
Jacksonville, Fla.	39	17	8	25	34
Jacksonville, Ill.	11	29	15	44	18
Jamestown, N. Y.	6	.....	11	11	10
Johnson City, Tenn.	13	10	8	18	19
Johnstown, Pa.	20	27	15	42	38
Joliet, Ill.	11	5	22	27	16
Kansas City, Kans.	21	33	7	40	72
Keene, N. H.	10	2	14	16	8
Klamath Falls, Oreg.	6	4	7	11	9
Knoxville, Tenn.	38	15	14	29	27
Laconia, N. H.	12	11	15	26	14
La Crosse, Wis.	8	14	9	23	77
La Grange, Ga.	11	1	13	14	12
Lake Charles, La.	16	4	9	13	14
Lakeland, Fla.	14	14	11	25	18
Lansing, Mich.	16	31	18	49	21
Lawrence, Mass.	13	17	7	24	8
Lead, S. Dak.	8	11	6	17	18
Lehighton, Pa.	14	16	32	48	28
Lewiston, Me.	10	5	20	25	25
Little Rock, Ark.	35	56	13	69	55
Long Beach, Calif.	10	15	16	31	39
Long Branch, N. J.	10	8	30	38	32
Los Angeles, Calif.	30	86	19	105	52
Louisville, Ky.	23	19	18	37	26
Lowell, Mass.	15	20	18	38	21
Lynchburg, Va.	20	11	11	22	14
Lynn, Mass.	13	5	18	23	22
Macon, Ga.	31	7	17	24	24
Mahanoy City, Pa.	13	3	25	28	22
Malden, Mass.	10	.....	15	15	13
Manchester, N. H.	22	23	19	42	18
Masontown, Pa.	8	3	18	21	4
McKeesport, Pa.	13	11	24	35	36
Meadville, Pa.	7	19	18	37	22
Medford, Oreg.	6	19	8	27	9
Memphis, Tenn.	34	12	9	21	31

[fol. 1422] P. Ex. 85, p. 6

Meriden, Conn.	20	10	19	29	13
Meridian, Miss.	18	8	13	21	14
Miami, Fla.	17	12	5	17	23
Middletown, N. Y.	16	2	21	23	24

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Milford, Mass	14	8	24	32	17
Milwaukee, Wis	20	64	11	75	37
Mineola, N. Y	13	1	21	22	37
Minneapolis, Minn	19	24	6	30	60
Missoula, Mont	3	2	5	7	14
Mobile, Ala	17	5	10	15	17
Monroe, La	15	20	8	28	15
Montgomery, Ala	36	17	18	35	23
Montpelier, Vt	6	23	10	33	20
Morristown, N. J	7		16	16	16
Muskegon, Mich	5	18	15	33	16
Muskogee, Okla	11	5	15	20	29
Nashua, N. H	8	9	12	21	16
Nashville, Tenn	28	24	36	60	57
Natchez, Miss	21	3	16	19	12
Natick, Miss	10	2	16	18	21
Newark, N. J	25	123	66	189	126
New Bedford, Mass	11	37	16	53	38
New Britain, Conn	11	14	30	44	18
New Brunswick, N. J	13	13	33	46	18
Newburgh, N. Y	19	11	19	30	30
Newburyport, Mass	14	3	16	19	12
New Haven, Conn	25	29	21	50	34
New London, Conn	18	9	29	38	23
New Orleans, La	64	19	24	43	19
Newport, R. I	13	13	20	33	33
Newport News, Va	9	3	24	27	7
New Rochelle, N. Y	9	2	26	28	26
New York, N. Y	282	397	138	535	409
Norfolk, Va	68	35	27	62	19
North Adams, Mass	25	9	16	25	16
Northampton, Mass	13	7	21	28	17
North Fork, W. Va	14	6	9	15	23
Norton, Va	19	3	12	15	26
Norwich, Conn	14	7	28	35	16
Oakland, Calif	10	25	55	80	31
Oil City, Pa	10	3	12	15	20
Oklahoma City, Okla	20	16	12	28	28
Omaha, Nebr	14	14	6	20	37
Oneonta, N. Y	12	6	17	23	12
Orange, N. J	8	1	30	31	18
Orlando, Fla	22	16	14	30	16
Oshkosh, Wis	10	13	16	29	18
Oswego, N. Y	7	2	13	15	18
Palestine, Tex	16	32	11	43	35

[fol. 1423] P. Ex. 85, p. 7

Paris, Tex	12	36	10	46	29
Pawtucket, R. I	12	9	17	26	14
Pensacola, Fla	16	7	3	10	11
Peoria, Ill	11	11	20	31	21
Perth Amboy, N. J	9	5	12	17	11
Philadelphia, Pa	71	71	92	163	104
Philipsburg, Pa	8	20	20	40	15
Phillipsburg, N. J	11	12	18	30	15
Phoenix, Ariz	15	13	5	18	17
Pine Bluff, Ark	40	127	23	150	62
Pittsburgh, Pa	42	96	30	126	107
Pittsfield, Mass	15	5	12	17	13

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Plainfield, N. J	8	1	29	30	21
Pocatello, Idaho	7	16	5	21	19
Port Arthur, Tex	7	1	8	9	9
Port Chester, N. Y	15	4	24	28	28
Port Huron, Mich	14	44	16	60	25
Port Jervis, N. Y	12	.....	18	18	15
Portland, Me	25	33	29	62	36
Portland, Oreg	10	32	6	38	64
Pottstown, Pa	10	29	36	61	29
Pottsville, Pa	17	12	30	42	26
Providence, R. I	21	32	26	58	45
Pueblo, Colo	12	26	12	38	35
Quincy, Ill	8	28	24	52	16
Quincy, Mass	14	.....	33	33	24
Raleigh, N. C	18	16	18	34	8
Reading, Pa	22	62	39	101	37
Reno, Nev	7	6	7	13	9
Richmond, Va	49	31	28	59	37
Roanoke, Va	32	6	9	15	27
Rochester, N. H	18	.....	19	19	12
Rochester, N. Y	20	19	23	42	32
Rockford, Ill	15	7	20	27	16
Rock Island, Ill	17	30	17	47	50
Rockland, Me	9	14	7	21	15
Rocky Mount, N. C	19	9	7	16	5
Rome, Ga	14	2	12	14	11
Rutland, Vt	11	5	18	23	18
Saginaw, Mich	13	13	10	23	48
Salem, Mass	10	16	11	27	17
Salisbury, Md	16	9	11	20	7
Salisbury, N. C	14	2	6	8	8
Salt Lake City, Utah	7	20	3	23	49
San Antonio, Tex	22	18	1	19	73
San Bernardino, Calif	10	7	12	19	13
San Diego, Calif	11	15	11	26	21
Sanford, N. C	15	22	11	33	11
San Francisco, Calif	71	127	22	149	267

[fol. 1424] P. Ex. 85, p. 8

Saratoga Springs, N. Y	15	2	15	17	16
Sault St. Marie, Mich	7	1	5	6	9
Savannah, Ga	37	50	24	74	39
Schenectady, N. Y	18	36	20	56	22
Scranton, Pa	25	51	29	80	46
Seattle, Wash	23	24	16	40	47
Selma, Ala	15	3	10	13	16
Sharon, Pa	3	14	13	27	13
Sheboygan, Wis	5	20	10	30	23
Shenandoah, Pa	18	13	23	36	40
Shreveport, La	28	9	6	15	19
Sioux City, Iowa	11	11	6	17	23
Somerville, N. J	13	10	30	40	16
So. Norwalk, Conn	7	.....	18	18	10
Spartanburg, S. C	23	2	12	14	13
Spokane, Wash	15	38	8	46	42
Springfield, Ill	14	22	28	50	30
Springfield, Mass	21	39	15	54	41
Stamford, Conn	7	7	15	22	17
Stapleton, N. Y	8	4	15	19	13

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Staunton, Va	11	2	5	7	5
St. Albans, Vt	8	.....	18	18	11
St. Johnsbury, Vt	14	22	11	33	11
St. Joseph, Mo	9	6	8	14	30
St. Louis, Mo	37	54	6	60	150
St. Paul, Minn	9	20	16	36	46
St. Petersburg, Fla	14	3	15	18	14
Sumter, S. C	25	10	10	20	5
Syracuse, N. Y	22	76	14	90	23
Tacoma, Wash	7	11	10	21	22
Tampa, Fla	32	15	7	22	26
Taunton, Mass	6	5	21	26	26
Taylor, Tex	12	35	19	54	28
Texarkana, Ark	22	6	7	13	9
Toledo, Ohio	13	34	22	56	66
Trenton, N. J	36	24	37	61	43
Trinidad, Colo	11	6	6	12	24
Troy, N. Y	14	22	22	44	23
Tucson, Ariz	9	7	6	13	9
Tulsa, Okla	10	6	9	15	23
Tuscaloosa, Ala	8	1	15	16	16
Uniontown, Pa	7	11	17	28	10
Utica, N. Y	25	13	14	27	23
Valdosta, Ga	27	38	21	59	12
Ventura, Calif	4	11	18	29	11
Vicksburg, Miss	10	8	4	12	6
Waco, Tex	19	54	23	77	38
Waltham, Mass	10	.....	30	30	27
Ware, Mass	11	.....	21	21	10
Washington, D. C	23	26	20	46	56
[fol. 1425]	P. Ex. 85, p. 9				
Waterbury, Conn	14	10	21	31	18
Waycross, Ga	21	2	11	13	10
Webster, Mass	13	6	16	22	12
West Brownsville, Pa	5	6	23	29	17
Westfield, Mass	12	5	12	17	13
West Palm Beach, Fla	12	7	8	15	17
Wheeling, W. Va	22	33	36	69	53
White River Junction, Vt	12	4	12	16	16
Wichita Falls, Tex	13	31	9	40	48
Wilkes-Barre, Pa	26	43	26	69	44
Williamson, W. Va	17	4	10	14	14
Williamsport, Pa	20	29	24	53	26
Willimantic, Conn	5	2	25	27	8
Wilmington, Del	9	27	16	43	24
Wilmington, N. C	42	9	17	26	16
Winston-Salem, N. C	32	11	9	20	29
Woonsocket, R. I	11	9	23	32	23
Worcester, Mass	16	27	34	61	36
Yoakum, Tex	10	.....	11	11	19
Yonkers, N. Y	10	13	34	47	36
Youngstown, Ohio	15	9	20	29	23
Grand Total	6,113	7,041	5,860	12,901	9,688

[fol. 1426] PETITIONER'S EXHIBIT 86

Summary Swift & Company's Competitors in Car Route Territories

[fol. 1427] P. Ex. 86, p. 2

Summary of Swift & Company's Competitors in Car Route Territories

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Swift & Company Car Routes: Harrisburg, Pa.					
Car Route No. 1	7	14	15	29	18
2	6	9	10	19	8
4	7	15	13	28	10
5	4	9	12	21	12
6	7	.....	11	11	9
7	4	.....	5	5	6
8	4	2	7	9	8
9	6	.....	12	12	11
10	3	15	11	26	9
11	6	2	5	7	7
12	7	8	19	27	10
13	10	8	20	28	18
15	7	4	8	12	8
16, 18, 19	10	9	21	30	16
17	6	8	15	23	9
20	7	7	8	15	3
21	4	4	8	12	4
22	5	4	7	11	9
23	10	5	19	24	16
24	9	8	10	18	12
25	10	18	18	36	15
27	13	16	9	25	11
28	8	3	12	15	12
Total	160	168	275	443	251
Cleveland, Ohio,					
Car Route No. 1	9	.....	12	12	6
2	6	.....	18	18	15
3	10	11	12	23	10
4	10	1	15	16	7
5	5	9	11	20	12
6	10	7	10	17	8
7	11	4	8	12	9
8	15	18	20	38	16
9	10	5	10	15	14
10	7	16	2	18	10
11	13	4	8	12	9
12	7	4	14	18	10
13	12	9	11	20	19
14	10	3	12	15	15
15	11	3	9	12	15
16	8	11	10	21	8
17	6	2	18	20	11
18	6	15	18	33	14
19	9	2	12	14	11
20	4	2	6	8	9
21	9	4	14	18	11
22	6	2	12	14	8
23	4	.....	10	10	6

[fol. 1428] P. Ex. 86, p. 3

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Cleveland, Ohio,					
Car Route No. 24	7	3	13	16	8
25	13	7	11	18	15
26	5	11	14	25	17
27	6	5	12	17	12
28	10	3	12	15	15
Total	239	161	334	495	320
Chicago, Ill.,					
Car Route No. 1	9	4	12	16	16
2	7	3	12	15	14
3	6	4	22	26	17
4		1	22	23	12
5	9	8	8	16	12
6	13	11	11	22	21
7	10	3	12	15	4
8	11	2	11	13	11
9	11	9	12	21	20
10	9	6	12	18	13
11	5	4	10	14	9
12	13	10	12	22	20
13	10	13	11	24	6
16	11	2	23	25	17
17	6	3	9	12	8
18	8	1	15	16	15
19	7	2	10	12	7
20	9	4	11	15	8
21	6	3	13	16	10
22	14	7	22	29	22
24	7	1	22	23	11
26	7	4	9	13	4
27	7	3	18	21	14
28	9	8	13	21	20
29	4	1	21	22	4
30	11	6	17	23	11
31	12	3	25	28	17
32	13	1	17	18	10
33	8	5	10	15	6
34	11	6	7	13	13
35	11	3	8	11	16
36	7	13	13	26	9
37	8	3	16	19	9
38	9	11	18	29	7
39	3	11	4	15	3
40	6	5	8	13	5
42	7	15	7	22	7
43	6	3	9	12	8
44	10	2	19	21	15
45	11	4	12	16	10
46	5	1	10	11	5
47	5	5	8	13	14
48	11	2	23	25	15
49	9	1	14	15	8
50	5	14	2	16	6
51	6	6	11	17	10

[fol. 1429] P. Ex. 86, p. 4

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 52	9	15	14	29	5
53	7	.....	28	28	14
54	8	.....	14	14	4
56	10	6	11	17	8
57	7	22	13	35	9
58	13	2	13	15	13
59	11	11	10	21	3
61	3	3	5	8	9
62	12	2	14	16	9
63	5	14	10	24	7
64	6	8	16	24	18
65	5	20	14	34	6
66	12	2	12	14	10
68	15	8	22	30	21
69	6	7	12	19	9
70, 72	13	40	13	53	50
71	6	9	11	20	7
73	5	7	10	17	7
74	14	8	24	32	24
75	6	13	8	21	43
76, 77	13	8	23	31	22
78	14	5	12	17	7
79	9	12	10	22	15
80	10	33	16	49	42
81	11	6	16	22	15
82	7	2	10	12	12
83	10	4	12	16	15
84	8	6	12	18	14
85	8	5	8	13	11
86, 87	10	6	22	28	18
88	4	8	13	21	4
89	9	12	12	24	6
90	9	3	9	12	8
91	11	2	18	20	15
93	11	18	8	26	8
95	7	1	6	7	13
96	5	6	6	12	6
97	7	7	14	21	12
98	9	15	7	22	13
99	6	.....	10	10	9
100	9	9	14	23	10
101	9	9	11	20	10
102	8	2	10	12	10
103	6	4	9	13	9
104	10	2	7	9	10
105	10	.....	22	22	8
106	11	22	19	41	20
107	9	21	16	37	11
108	4	24	13	37	8
114	10	2	11	13	15
115	7	3	9	12	8
120	9	6	11	17	8
Total	835	697	1281	1978	1187

[fol. 1430] P. Ex. 86, p. 5

National Stock Yards, Ill.,	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 1	9	25	11	36	13
2	8	6	7	13	4
3	14	8	7	15	7
4	9	5	8	13	7
6	7	1	11	12	7
7	14	2	12	14	12
8	5	12	7	19	4
9	8	5	11	16	11
10	8	2	10	12	6
11	8	1	5	6	4
13	9	4	8	12	13
15	9	8	15	23	17
16	7	4	7	11	3
17	7	6	5	11	7
18	8	9	2	11	6
19	13	1	8	9	5
20	10	9	10	19	13
22	9	8	6	14	10
23	11	1	7	8	8
24	7	6	9	15	13
25	12	4	10	14	15
26	14	4	11	15	10
27	7	3	8	11	5
28	13	5	4	9	8
30	6	.....	7	7	9
31	18	5	14	19	20
32	18	17	17	34	21
33	3	4	22	26	13
35	6	9	9	18	6
38	8	15	10	25	13
39	6	17	6	23	6
40	10	24	13	37	14
41	6	5	6	11	6
42	18	2	6	8	7
43	19	14	11	25	7
44	11	1	11	12	6
45	12	2	8	10	3
47	4	19	8	27	12
48	9	4	10	14	13
49	8	11	9	20	9
50	6	1	8	9	7
51	7	6	11	17	7
52	8	5	5	10	5
53	14	15	7	22	20
54	15	1	14	15	6
56	4	.....	11	11	8
57	9	4	19	23	26
58	4	13	12	25	15
60	6	6	11	17	14
61	10	11	8	19	5
62	4	1	8	9	4
63	9	4	11	15	23
64	15	4	12	16	23
65	7	.....	3	3	3

[fol. 1431] P. Ex. 86, p. 6

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 66	5	.....	8	8	6
67	9	5	5	10	9
68	11	1	4	5	8
69	9	12	12	24	23
70	11	11	15	26	24
71	11	7	13	20	25
72	10	14	12	26	23
73	2	1	5	6	15
74	8	1	5	6	14
75	12	.....	8	8	7
76	8	1	7	8	9
77	7	1	7	8	7
78	8	8	8	16	3
79	3	5	10	15	8
80	6	5	4	9	5
81	16	8	10	18	8
82	14	7	13	20	13
83	5	1	6	7	6
84	13	.....	7	7	3
85	11	3	9	12	9
86	16	10	14	24	14
87	14	10	17	27	16
88	11	4	8	12	9
89	6	1	7	8	6
90	7	3	11	14	8
91	9	3	8	11	15
92	9	3	9	12	15
93	5	.....	6	6	7
94	6	2	7	9	5
95	10	2	7	9	9
96	9	7	9	16	9
98	5	.....	11	11	10
Total	792	495	788	1283	887
St. Louis, Mo., Car Route No. 1	11	8	7	15	12
2	9	5	10	15	15
3	9	4	10	14	14
4	9	7	12	19	8
6	10	.....	7	7	9
7	4	1	7	8	8
8	6	7	8	15	6
9	11	1	10	11	11
10	7	14	8	22	11
11	12	13	10	23	13
12	12	1	10	11	11
13	12	12	7	19	11
14	10	1	10	11	15
15	6	.....	10	10	8
16	6	7	8	15	10
17	21	.....	9	9	9

[fol. 1432] P. Ex. 86, p. 7

18	15	2	9	11	12
20	6	.....	4	4	5

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 23	10	6	10	16	9
24	6	3	7	10	9
25	12	14	11	25	23
27	11	14	9	23	22
28	10	16	8	24	23
30, 32	9	7	11	18	19
33	7	.....	13	13	6
34	10	2	12	14	8
35	8	.....	13	13	6
37	4	.....	7	7	6
38	7	.....	10	10	9
39	12	.....	14	14	8
40	11	.....	8	8	7
41	9	1	12	13	7
42	10	.....	13	13	16
43	10	.....	14	14	11
44	12	2	13	15	11
46	12	.....	9	9	8
47	5	8	9	17	5
49	14	.....	8	8	8
Total	365	156	367	523	409
Fort Worth, Tex., Car Route No. 1	6	12	13	25	14
3	6	11	8	19	7
4	5	6	8	14	10
5	8	21	7	28	8
6	5	6	6	12	8
7	8	14	12	26	6
8	13	18	16	34	13
9	8	6	15	21	15
10	4	15	9	24	9
11	7	8	7	15	7
12	7	5	8	13	5
13	6	10	6	16	10
14	14	23	11	34	13
15	11	7	11	18	13
16	8	7	12	19	4
17	7	5	6	11	8
18	8	22	13	35	6
19	11	8	9	17	10
20	9	9	5	14	7
21	7	10	5	15	5
22	17	11	8	19	15
23	10	18	7	25	11
24	12	15	11	26	10
25	6	22	5	27	9
26	14	12	10	22	11
27	7	5	10	15	8
28	9	3	8	11	10
29	8	7	6	13	7
30	11	12	10	22	15

[fol. 1433] P. Ex. 87, p. 8

31	8	5	11	16	4
32	4	9	5	14	7
33	7	8	3	11	8
34	5	8	9	17	9

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 35	12	13	10	23	6
36	8	8	8	16	8
37	5	5	13	18	8
38	6	16	5	21	7
39	11	9	6	15	16
40	3	10	7	17	6
41	7	13	11	24	15
42	5	7	5	12	6
43	6	3	4	7	6
44	9	10	5	15	8
Total	347	452	364	816	388
Kansas City, Kans., Car Route No. 1	7	6	7	13	8
2	11	11	6	17	7
3	16	3	7	10	10
4	8	3	7	10	9
5	12	1	9	10	10
6	13	7	5	12	23
7	14	1	9	10	14
8	11	.....	11	11	12
9	8	1	14	15	12
10	9	4	11	15	9
11	12	10	10	20	11
12	19	4	9	13	11
13	13	2	12	14	14
14	15	8	12	20	13
15	10	10	6	16	23
16	9	6	8	14	15
17	13	7	13	20	12
18	13	5	8	13	12
19	15	4	6	10	10
20	12	7	8	15	11
21	8	11	6	17	11
22	11	4	10	14	10
23	10	4	13	17	25
24	8	2	11	13	10
25	12	8	9	17	13
26	13	7	6	13	14
27	11	21	9	30	11
28	7	2	10	12	15
29	8	9	9	18	8
30	13	.....	11	11	17
31	14	12	6	18	5
32	10	22	8	30	10
33	6	.....	7	7	7
34	12	5	13	18	10
35	8	1	7	8	13
36	7	4	10	14	18

[fol. 1434] P. Ex. 86, p. 9

37	5	4	11	15	11
38	12	.....	9	9	13
40	10	2	11	13	9
41	11	2	12	14	13
42	15	5	8	13	11
43	17	2	10	12	15

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 44	17	2	14	16	15
45	10	4	11	15	9
47	7	1	8	9	9
48	14	11	6	17	26
49	8	2	5	7	11
50	13	12	8	20	11
51	13	3	8	11	14
52	9	12	6	18	15
54	10	10	9	19	13
55	10	2	7	9	5
56	12	3	10	13	9
58	12	7	7	14	17
59	11	1	10	11	11
60	12	10	7	17	12
61	12	6	12	18	14
63	9	1	6	7	12
64	9	1	7	8	9
67	13	6	13	19	27
68	9	17	7	24	12
73	16	3	7	10	9
74	12	5	10	15	9
76	9	12	12	24	16
77	16	6	9	15	17
79	11	1	6	7	7
81	7	5	6	11	8
84	14	12	13	25	16
87	12	4	9	13	14
Total	775	386	617	1003	862
So. St. Joseph, Mo., Car Route No. 1	11	5	14	19	23
2	15	3	6	9	11
3	13	3	11	14	16
4	28	3	9	12	15
5	13	3	11	14	11
6	12	14	9	23	14
7	17	8	18	26	24
8	5	2	4	6	7
9	17	8	9	17	14
10	19	10	8	18	17
11	14	10	9	19	7
12	23	17	6	23	22
15	13	1	11	12	12
16	12	13	9	22	5
17	13	3	11	14	14

[fol. 1435] P. Ex. 86, p. 10

18	8	12	12	24	13
19	23	5	5	10	13
21	13	6	6	12	11
22	11	17	7	24	12
23	14	8	7	15	14
24	20	8	6	14	16
25	15	19	8	27	17
26	13		16	16	18
27	12	2	6	8	9
28	12	5	12	17	20

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 29	14	2	14	16	13
30	12	7	8	15	8
31	22	5	9	14	14
34	17	3	10	13	13
Total	434	202	271	473	403
Omaha, Nebr.,					
Car Route No. 1	10	4	8	12	30
2	10	6	8	14	14
3	5	4	9	13	7
4	7	10	4	14	9
5	11	10	8	18	16
6	14	10	5	15	13
7	9	3	16	19	17
8	9	15	10	25	22
9	9	12	7	19	11
10	10	13	4	17	6
11	11	2	10	12	5
12	16	10	9	19	17
13	15	20	9	29	21
14	8	6	3	9	12
15	9	8	9	17	13
17	9	6	16	22	18
18	6	2	9	11	15
19	8	4	8	12	8
20	5	11	8	19	6
21	9	1	5	6	10
22	8	7	8	15	11
23	13	15	9	24	18
24	7	6	9	15	11
25	7	2	11	13	9
26	10	5	7	12	6
27	8	5	3	8	13
28	10	9	5	14	6
29	16	3	6	9	8
30	10	8	7	15	8
31	16	2	13	15	17
32	6	3	12	15	15
33	15	11	11	22	14
34	10	4	7	11	9
36	8	2	19	21	5
37	12	24	4	28	12

[fol. 1436] P. Ex. 86, p. 11

38	10	4	12	16	16
39	18	5	9	14	14
40	12	.....	5	5	7
41	7	9	6	15	9
42	9	14	11	25	10
43	10	6	7	13	16
44	8	1	6	7	2
45	10	20	9	29	30
46	10	8	5	13	8
47	18	19	5	24	17
Total	458	349	371	720	561

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Sioux City, Iowa, Car Route No. 1	5	8	8	16	8
2	11	12	5	17	13
3	14	12	4	16	18
4	13	4	8	12	13
5	9	.....	6	6	15
6	11	6	5	11	13
7	11	3	4	7	8
8	10	4	7	11	17
9	10	3	8	11	15
10	8	.....	7	7	10
11	11	.....	8	8	11
12	12	3	4	7	6
13	11	1	5	6	7
14	11	6	6	12	8
15	6	12	8	20	10
16	9	12	7	19	10
17	16	17	7	24	22
18	9	5	7	12	11
19	13	12	8	20	26
20	9	6	7	13	11
21	9	15	3	18	2
22	9	24	5	29	10
23	8	14	5	19	10
24	11	19	10	29	15
25	13	6	6	12	7
26	12	6	6	12	20
27	7	5	7	12	8
28	6	1	12	13	14
29	8	13	9	22	12
30	8	14	10	24	14
31	5	2	7	9	12
32	7	1	7	8	15
Total	312	246	216	462	391
So. St. Paul, Minn., Car Route No. 1	9	5	5	10	13
2	12	13	13	26	13
3	10	5	12	17	11
4	13	10	7	17	7

[fol. 1437] P. Ex. 86, p. 12

5	13	14	12	26	10
6	15	11	11	22	18
7	10	14	8	22	13
8	22	17	10	27	4
9	7	8	9	17	19
10	12	7	8	15	8
11	16	2	11	13	19
12	7	2	8	10	4
13	10	12	9	21	7
14	13	18	5	23	30
15	14	13	5	18	11
16	7	7	9	16	9
17	11	26	16	42	13
18	16	8	7	15	27
19	13	7	10	17	21
20	13	1	18	19	7

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 21	11	1	19	20	11
22	6	25	6	31	5
23	7	1	7	8	7
24	16	17	9	26	9
25	9	3	6	9	5
26	11	2	8	10	12
27	11	2	10	12	14
28	20	24	11	35	30
29	27	22	11	33	31
30	7	11	5	16	6
31	15	16	14	30	22
32	13	3	6	9	14
33	5	1	5	6	5
34	15	24	5	29	8
35	7	2	7	9	6
36	7	12	14	26	1
37	7	13	6	19	8
38	13	4	9	13	9
39	20	14	9	23	17
40	15	13	11	24	5
41	10	21	6	27	5
42	13	6	16	22	12
43	12	2	5	7	9
44	9	4	8	12	6
45	14	11	6	17	15
46	5	2	4	6	2
47	11	5	10	15	28
48	10	14	10	24	23
49	6	7	5	12	8
50	7	12	10	22	13
51	12	24	3	27	3
52	13	4	8	12	12
53, 55, 72	14	9	29	39	22
54	6	13	6	19	9
56	8	1	7	8	13
57	6	3	4	7	2
[fol. 1438]	P. Ex. 86, p. 13				
58	10	21	9	30	23
59	15	10	4	14	6
60	18	8	7	15	20
61	17	9	9	18	17
62	13	9	10	19	24
63	11	4	6	10	4
64	11	5	10	15	6
65	12	20	8	28	17
66	4	4	5	9	11
67	8	14	12	26	16
68	14	22	9	31	17
69	12	17	13	30	11
70	8	8	9	17	12
71	6	5	5	10	9
73	11	5	12	17	20
74	8	9	8	17	8
75	16	8	10	18	3
76	7	2	12	14	11
77	7	14	9	23	10
78	14	8	8	16	17

	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
Car Route No. 79	8	1	8	9	5
80	9	6	6	12	14
81	7	3	5	8	4
82	9	9	14	23	13
83	8	4	8	12	8
84	8	4	7	11	26
85	9	2	5	7	5
86	14	10	11	21	24
87	15	4	9	13	11
88	11	7	8	15	23
89	11	15	8	23	8
90	10	2	11	13	10
91	4	21	5	26	8
92	7	13	11	24	13
93	8	7	6	13	8
94	11	3	12	15	5
95	10	3	14	17	12
96	6	8	7	15	10
97	10	27	6	33	7
98	11	4	4	8	9
99	17	4	7	11	7
100	6	6	7	13	10
101	17	13	8	21	10
102	10	6	5	11	9
103	12	37	10	47	9
104	10	2	19	21	9
105	9	.....	19	19	9
107	8	.....	18	18	8
108	14	30	5	35	6
109	5	.....	12	12	4
Total	1157	1001	958	1959	1237

[fol. 1439] P. Ex. 86, p. 14

Denver, Colo., Car Route No. 1	6	3	17	20	13
2	7	5	11	16	10
3	11	5	5	10	4
4	5	12	6	18	9
5	6	18	1	19	12
7	4	4	6	10	11
8	12	5	10	15	18
9	6	1	6	7	16
10	13	3	8	11	6
11	3	4	5	9	6
12	4	7	8	15	13
13	4	.....	12	12	9
14	4	1	4	5	10
15	8	3	7	10	10
16	9	2	5	7	8
17	10	18	8	26	9
18	9	2	12	14	12
20	7	1	7	8	9
21	11	2	9	11	7
22	11	3	7	10	10
23	9	.....	6	6	9
Total:	159	99	160	259	211

No. Portland, Oreg. Car Route No.	Number of competitors				
	Wholesale grocers	Meat competitors			Produce competitors
		Local	Outside	Total	
1	10	9	9	18	13
2	8	13	8	21	10
3	5	12	6	18	6
4	9	13	10	23	14
5	6	18	9	27	11
6	6	8	13	21	21
7	6	10	7	17	8
8	3	5	6	11	5
9	5	7	8	15	6
10	7	6	8	14	9
11	4	5	6	11	8
12	5	8	8	16	15
13	6	11	3	14	12
14	7	12	8	20	10
15	9	8	8	16	9
16	6	13	12	25	10
17	9	16	16	32	24
18	6	12	6	18	8
19	9	6	8	14	8
20	8	15	7	22	9
21	8	20	8	28	13
22	9	13	15	28	17
Total	151	240	189	429	246
Grand Total	6184	4652	6191	10843	7343

[fol. 1440] PETITIONER'S EXHIBIT 89

A List of Slaughterers, Meat Packers, and Meat Processors Who Handle "Unrelated Articles" Prohibited to the Four Defendant Packers

[fol. 1441] P. Ex. 89, p. 2

Name of firm	Address	Prohibited articles handled
A		
J. C. Adler Co	Joliet, Ill	Fish, vegetables and fruit.
Agar Packing & Provision Co	Chicago, Ill	Condiments and sauerkraut.
Albany Packing Co	Albany, N. Y	Fish.
Albert Lea Packing Co	Albert Lea, Minn	Fish, fruit, jams, jelly, etc., and sauerkraut.
American Packing & Provision Co.	Ogden, Utah	Fish, condiments and sauerkraut.
Arnold Bros	Chicago, Ill	Fruit, grape juice, jams, jelly, etc., sauces, condiments, relishes, sauerkraut and coffee.
B		
Babbitt Bros. Trading Co	Flagstaff, Ariz	Fish, vegetables, fruit, confectionery, syrups, soda fountain supplies, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits, and cereals.
Batchelder, Snyder, Dorr, & Doe Co. (Subsidiary of the General Foods Corporation.)	Boston, Mass	Fish, vegetables, fruit, syrups, molasses, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, nuts, and cereals.

[fol. 1442] P. Ex. 89, p. 3

Name of firm	Address	Prohibited articles handled
The Wm. Bauer Co	Cleveland, Ohio	Fish, vegetables, fruit, soft drinks, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut and coffee.
The Baumgardner Supply Co	Uniontown, Pa	Fish, vegetables, fruit, grape juice, molasses, honey, jams, jelly, etc., sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.
W. A. Bean & Sons	Bangor, Me	Condiments, relishes and sauerkraut.
J. W. Beardsley & Sons	Newark, N. J	Fish.
Beck & Hill	Pittsburgh, Kans	Fish, vegetables, relishes and sauerkraut.
Beech-Nut Packing Co	Canajoharie, N. Y	Fish, vegetables, fruit, confectionery, soda fountain supplies, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, coffee, tea, cocoa, nuts, wafers, crackers and biscuits.
Betbeze Bros	Meridian, Miss	Fish.
Louis Bobak Sausage Factory	Ennis, Tex	Fish.
Bradley Gregg Meat Co	Trinidad, Colo	Bread.

The Brandt Co	Cleveland, Ohio	Fish, vegetables, fruit, sauerkraut and tea.
Buehler Bros. (E. Godel & Sons)	Peoria, Ill	Fish, vegetables, sauces, relishes and sauerkraut.
Butler Packing Co.	Butler, Pa	Fish and sauerkraut.
C		
Carstens Packing Co	Tacoma, Wash	Fish, spices, pickles and sauerkraut.
Chamberlain & Co	Boston, Mass	Fruit.
Cheshire Beef & Products Co	Keene, N. H	Fish, vegetables and fruit.
Chippewa Sausage Co	Chippewa Falls, Wis	Fish, vegetables and sauerkraut.
Chitwood Packing Co	McCook, Nebr	Spices, relishes and sauerkraut.
Consolidated Beef & Provision Co	Baltimore, Md	Fish and vegetables.
Cudahy Bros. Co	Cudahy, Wis	Sauerkraut.
D		
T. H. Davis Co	Middleport, Ohio	Fish, vegetables, fruit. sauerkraut, coffee and tea
Jacob E. Decker & Sons (Subsidiary of Adolf Gobel, Inc.)	Mason City, Iowa	Fish, relish and sauerkraut.
Sam Debinsky	Saginaw, Mich	Sauerkraut.
Deerfoot Farms Co. (Subsidiary of The National Dairy Products Co.)	Southboro, Mass	Vegetables.

Name of firm	Address	Prohibited articles handled
Detroit Packing Co	Detroit, Mich	Sauerkraut.
Jacob Dold Packing Co	Buffalo, N. Y	Fish, vegetables, fruit, malt syrup, honey, jams, jelly, etc., sauces, condiments, relishes, olives, pickles, sauerkraut, coffee and cocoa.
Dothan Packing Co	Dothan, Ala	Fish.
Drummond Packing Co	Eau Claire, Wis	Fish.
Dunlevy-Franklin Co	Pittsburgh, Pa	Fish.
Dunn-Ostertag Packing Co	Wichita, Kans	Relishes.
Duquoin Packing Co	Duquoin, Ill	Soda fountain supplies, jams, jelly, etc., condiments and relishes.
E		
Elliott & Co	Duluth, Minn	Fish.
East Tennessee Packing Co	Knoxville, Tenn	Fish, vegetables, soups, fruit, jams, jelly, etc., and sauerkraut.
Eatmore Products Co	Wisconsin Rapids, Wis	Fish, spices, condiments, relishes, sauerkraut and coffee.
Emmart Packing Co	Louisville, Ky	Fish.
J. H. Ennis	Milledgeville, Ga	Fish, vegetables and fruit.
Ennis Market & Sausage Factory	Ennis, Tex	Fish.
F		
Field Packing Co	Owensboro, Ky	Condiments and relishes.

A. Fink	Newark, N. J	Fish, vegetables, soups, fruit and sauerkraut.
Wm. Fockes Sons Co	Dayton, Ohio	Fish, fruit and sauerkraut.
Jacob Forst Packing Co	Kingston, N. Y	Sauerkraut.
Frank & Co	Milwaukee, Wis	Sauerkraut and bread.
Frye & Co	Seattle, Wash	Fish and sauerkraut.
G		
Adolf Gobel, Inc	New York City, N. Y	Condiments, relishes, pickles and sauerkraut.
Goodyear Bros	Sunderland, Mass	Vegetables.
Great Falls Meat Co	Great Falls, Mont	Fish.
H		
Haas-Davis Packing Co	Mobile, Ala	Fish, vegetables, fruit, confectionery, syrups, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolave, cocoa and nuts.
Edward Hahn	Johnstown, Pa	Relishes and sauerkraut.
Hammond Standish Co	Detroit, Mich	Sauerkraut.
John Hervitz	Harrisburg, Pa	Fish.
Herziger Sausage Factory	Sheboygan, Wis	Relishes and sauerkraut.
Charles Horner	Salt Lake City, Utah	Fish and sauerkraut.

[fol. 1446] P. Ex. 89, p. 7

Name of firm	Address	Prohibited articles handled
P. E. Holz & Son	Charleston, W. Va	Fish and condiments.
Geo. A. Hormel & Co	Austin, Minn	Fish, malt syrup, relishes and sauerkraut.
Hughes-Curry Packing Co	Anderson, Ind	Fish.
Hull & Dillon Packing Co	Pittsburg, Kans	Condiments and relishes.
Hy-grade Food Products Corp	New York, N. Y	Fish, vegetables, fruit, soda fountain supplies, molasses, jams, jelly, etc., spices, sauces, relishes, sauerkraut, coffee and tea.
I		
Indiana Provision Co	Indianapolis, Ind	Fish.
J		
Jones Chambliss Co	Jacksonville, Fla	Fish, syrups, grape juice, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, flour, sugar, rice and cereals.
K		
K. & B. Packing & Provision Co	Denver, Colo	Fish.
Kansas Packing Co	Manhattan, Kans	Fish.
K. & R., Inc	Hastings, Nebr	Fish, vegetables, fruit, jams, jelly, etc., sauces, relishes and sauerkraut.
Keefe-Le Sturgeon	Arkansas City, Kans	Fish, condiments and sauerkraut.

Kerber Packing Co	Elgin, Ill	Fish, condiments and sauerkraut.
Kingan & Co	Indianapolis, Ind	Fish, vegetables, fruit, jams, jelly, etc., sauces, condiments, relishes and sauerkraut.
Felix Klys	Webster, Mass	Fruit and sauerkraut.
Kriel Packing Co	Baltimore, Md	Fish and sauerkraut.
Kroger Grocery & Baking Co	Cincianati, Ohio	Fish, vegetables, fruit, confectionery, syrups, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.
Kuhner Packing Co	Muncie, Ind	Fish.
L		
Las Vegas Mercantile Co	Trinidad, Colo	Fish, vegetables, fruit, molasses, honey, jams, jelly, etc., spices, condiments, relishes, coffee, tea, chocolate, cocoa, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.
Leavenworth Packing & Storage Co.	Leavenworth, Kans	Fish, relishes and sauerkraut.
Lima Packing Co	Lima, Ohio	Fish and vegetables.

Name of firm	Address	Prohibited articles handled
Livingston's Fancy Food Products Co.	Los Angeles, Calif	Fish.
The Lohrey Packing Co	Cincinnati, Ohio	Sauerkraut.
Lee Lutz Mc	Meridian, Miss	Fish.
J. T. McMillan Co	St. Paul, Minn	Fish, condiments, malt, relishes and sauerkraut.
M		
Madison Packing Co., Inc	Madison, Wis	Fish, jams, jelly, etc., condiments, relishes and sauerkraut.
G. W. Martin	Cumberland, Md	Sauces, sauerkraut and coffee.
Oscar Mayer & Co	Chicago, Ill	Confectionery, condiments, relishes and sauerkraut.
Joe. Michael	Meridian, Miss	Fish.
Miller & Hart	Chicago, Ill	Relishes and sauerkraut.
Milner Provision Co	Frankfort, Ind	Fish.
Modern Sausage Co	Salt Lake City, Utah	Fish.
Morgan Packing Co	Tuscaloosa, Ala	Fish.
M. Morgan	Meridian, Miss	Fish.
John Morrell & Co	Ottumwa, Iowa	Vegetables, jams, jelly, etc., sauces, condiments, relishes and sauerkraut.
Morton Gregson Co	Nebraska City, Nebr	Vegetables, jams, jelly, etc., condiments, relishes and sauerkraut.
Munns Bros	Lexington, Ky	Fish.

N		
The New Zanesville Provision Co.	Zanesville, Ohio	Fish, vegetables, fruit, confectionery, syrups, soda fountain supplies, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate and cocoa.
Norfolk Packing Co	Norfolk, Va	Fish, vegetables, fruit, condiments and sugar.
Norman Packing Co	Portsmouth, Va	Fish, vegetables, fruit, syrups, jams, jelly, etc., condiments, coffee, tea, and sugar.
North Side Packing Co	Pittsburgh, Pa	Fish, fruit and sauerkraut.
Novaky Bros	Perth Amboy, N. J	Sauerkraut.
O		
L. A. O'Donnell Estate	Vincennes, Ind	Fish.
Oswald & Hess	Pittsburgh, Pa	Fish, fruit and sauerkraut.
P		
Parrot Packing Co	Ft. Wayne, Ind	Fish.
G. M. Peet Packing Co	Chesaming, Mich	Sauerkraut.
Peyton Packing Co	El Paso, Tex	Fish.
Purity Sausage Co	Mankato, Minn	Fish.

Name of firm	Address	Prohibited articles handled
R		
Rath Packing Co.	Waterloo, Iowa	Fish, vegetables, fruit, jams, jelly, etc., and sauerkraut.
Reading Abattoir Co	Reading, Pa	Sauces, relishes and sauerkraut.
C. H. Rice Co	Bangor, Me	Fish, vegetables and fruit.
C. E. Richards & Sons	Muscatine, Iowa	Fish, condiments, relishes and sauerkraut.
M. Robles Com'l Co., Inc	Sonora, Ariz	Fish, vegetables, fruit, confectionery, syrups, soda fountain supplies, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.
Roseland Farm & Manufacturing Co.	Warrensburg, Mo	Vegetables and fruit.
S		
Sanitary Packing Co	Klamath Falls, Ore	Fish.
Salt Lake Sausage Co	Salt Lake City, Utah	Fish.
Sarnecki Bros	Cleveland, Ohio	Fish, vegetables, fruit, confectionery syrups, grape juice, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.

Scala Packing Co	Utica, N. Y.	Pickles.
S. Schafer Packing Co	Walsenburg, Colo	Fish.
Jacob Schlacter & Sons Co	Cincinnati, Ohio	Relishes and sauerkraut.
Schaffner Bros. Co	Erie, Pa	Sauerkraut.
Schoene Sausage Co	Racine, Wis	Fish.
Sedalia Packing Co	Sedalia, Mo	Sauces, condiments and relishes.
Seegar & Harrison	Montgomery, Ala	Fish.
J. Seiler & Sons	Trenton, N. J	Fish and sauerkraut.
E. G. Shinner & Co	Flint, Mich	Fish and sauerkraut.
T. M. Sinclair & Co	Cedar Rapids, Iowa	Vegetables, sauces, condiments and relishes.
Otto Stahl	New York City, N. Y	Condiments, spices and sauerkraut.
Standard Sausage Co	Minneapolis, Minn	Fish.
The Stedman Co	Athens, Ohio	Fish.
Sullivan Packing Co	Detroit, Mich	Sauerkraut.
D. D. Sutton	Provo, Utah	Fish, vegetables, fruit, confectionery, syrups, soft drinks, grape juice, molasses, honey, jams, jelly, etc., spices, sauces, condiments, relishes, sauerkraut, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits and cereals.

Name of firm	Address	Prohibited articles handled
T		
Toffic Monsour	Flint, Mich	Fish, vegetables and fruit.

[fol. 1452] P. Ex. 89, p. 13

Twin City Packing Co	Menominee, Mich	Sauerkraut and coffee.
U		
Upchurch Packing Co	Atlanta, Ga	Fish.
United Home Dressed Beef Co	Altoona, Pa	Sauerkraut.
V		
Vette & Zuncker Packing Co	Chicago, Ill	Coffee.
W		
Wahkousa Packing Co	Fort Dodge, Iowa	Fish.
Weimer Packing Co	Wheeling, W. Va	Vegetables, fruit, syrups, jams, jelly, etc., condiments, relishes and sauerkraut.
White Provision Co	Atlanta, Ga	Fish.
Y		
C. A. Young Co	Johnstown, Pa	Relishes and sauerkraut.
Z		
Wm. Zeller & Co	Pittsburgh, Pa	Fish, sauces, relishes and sauerkraut.

[fol. 1453] PETITIONER'S EXHIBIT 90

List of Chain Stores Performing Meat-packing Operations

[fol. 1454] P. Ex. 90, p. 2

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
S. A. Alexander	Chicago, Ill	Meat Warehouse	5 Yrs.
Amarillo Wholesale Meat Company: (8 markets)	Amarillo, Texas	Meat Warehouse Meat Cutting	2 Yrs.
C. Amend & Son, Inc (4 stores) (4 markets)	Des Moines, Iowa	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	25 Yrs.
American Stores Co (2645 stores) (654 markets)	Binghamton, N. Y	Meat Warehouse Sausage Making	3 Yrs.
	Philadelphia, Pa	Meat Warehouse Bacon Slicing	20 years
	Baltimore, Md	Meat Warehouse Bacon Slicing	5 Yrs.
J. B. Blood Co (5 stores) (5 markets)	Lynn, Mass	Meat Warehouse	10 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
H. C. Bohack Co., Inc. (504 stores) (230 markets)	Brooklyn, N. Y.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing	10 Yrs.
Bowman-Lauer Co	Chicago, Ill	Sausage Making Meat Processing	5 Yrs.
Brockelman Bros., Inc. (12 stores) (2 markets)	Worcester, Mass	Meat Warehouse Bacon Slicing Meat Cutting	1 Yr.
Brown & Colombo	Herrin, Ill	Meat Warehouse	15 yrs.
Buehler Bros., Inc	Chicago, Ill	Sausage Making Bacon Slicing Meat Processing	5 Yrs.
Community Meat Markets, Inc (15 markets)	Chicago, Ill	Meat Warehouse	8 Yrs.
[fol. 1455]	P. Ex. 90, p. 3		
J. W. Crook (161 stores) (81 markets)	Baltimore, Md	Meat Warehouse Sausage Making Bacon Slicing Meat Processing	7 Yrs.

Danahy-Faxon Stores, Inc. (160 stores) (100 markets)	Buffalo, N. Y.	Sausage Making Meat Processing	5 Yrs.
Daniel Bros. (5 markets)	Columbia City, Ind.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	2 Yrs.
Daniel Grocery Co (15 stores) (9 markets)	Murphysboro, Ill.	Meat Warehouse	4 Yrs.
Dryfus Pkg. & Prov. Co	Lafayette, Ind.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	10 Yrs.
Eastern Packing Co (25 markets)	Decatur, Ill.	Meat Warehouse	7 Yrs.
Economy Grocery Stores Corp (364 stores) (82 markets)	So. Boston, Mass.	Meat Warehouse Bacon Slicing Meat Cutting	2 Yrs.
J. C. Edenton	Jackson, Tenn.	Meat Warehouse	27 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Evan Groc. Co. (6 stores) (6 markets)	Gallipolis, Ohio	Meat Warehouse	2 Yrs.
Feilchenfeld Bros., Inc (28 markets; some handle groceries)	Chicago, Ill	Meat Warehouse	5 Yrs.
[fol. 1456]	P. Ex. 90, p. 4		
First National Stores (2659 stores) (192 markets)	Somerville, Mass	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing	4 Yrs.
E. W. Fulmer Co (51 stores) (44 markets)	Lima, Ohio	Sausage Making Bacon Slicing	3 Yrs.
Fulton Market (4 markets)	Des Moines, Ia.	Sausage Making	15 Yrs.
Fulton Markets (41 stores) (41 markets)	Waterbury, Conn	Sausage Making Bacon Slicing Meat Processing	5 Yrs.
General Market House Co (75 markets)	Chicago, Ill	Meat Warehouse	9 Yrs.

S. A. Glass	Lexington, Ky	Meat Warehouse	8 Yrs.
The J. E. George Groc. Co	Liberal, Kans	Slaughtering	3 Yrs.
(15 stores)			
(15 markets)			
The Great Atlantic & Pacific Tea Company	Albany, N. Y	Bacon Slicing	8 Yrs.
(15390 stores)			
(3000 markets)			
	Atlanta, Ga	Meat Warehouse	
		Bacon Slicing	
	Baltimore, Md	Meat Warehouse	10 Yrs.
	Buffalo, N. Y	Meat Warehouse	
		Bacon Slicing	
	Charlotte, N. C	Meat Warehouse	3 Yrs.
		Bacon Slicing	
	Chicago, Ill	Bacon Slicing	6 Yrs.
	Cleveland, O	Meat Warehouse	
		Bacon Slicing	
		Meat Cutting	
	Columbus, O	Bacon Slicing	1 Yrs.

[fol. 1457]

P. Ex. 90, p. 5

	Detroit, Mich	Meat Warehouse	3 Yrs.
		Bacon Slicing	
	Dorchester, Mass	Meat Warehouse	2 Yrs.
	Flint, Mich	Meat Warehouse	

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
The Great Atlantic & Pacific Tea Co	Grand Rapids, Mich	Meat Warehouse	1-1/2 Yrs.
	Indianapolis, Ind	Meat Warehouse	2 Yrs.
		Bacon Slicing	
	Jacksonville, Fla	Meat Warehouse	5 Yrs.
		Bacon Slicing	
	Jamaica, N. Y	Meat Warehouse	2 Yrs.
		Bacon Slicing	
	Newark, N. J	Meat Warehouse	2 Yrs.
		Bacon Slicing	
	New Haven, Conn	Bacon Slicing	4 Yrs.
	New York, N. Y	Meat Warehouse	2 Yrs.
		Bacon Slicing	
	Norfolk, Va	Meat Warehouse	3 Yrs.
	Philadelphia, Pa	Meat Warehouse	1 Yr.
		Bacon Slicing	
	Pittsburgh, Pa	Bacon Slicing	
	Portland, Me	Meat Warehouse	3 Yrs.
		Bacon Slicing	
	Providence, R. I	Meat Warehouse	4 Yrs.
		Bacon Slicing	

	Richmond, Va.	Meat Warehouse	10 Yrs.
		Bacon Slicing	
	Somerville, Mass.	Bacon Slicing	10 Yrs.
	Springfield, Mass.	Meat Warehouse	1 Yr.
		Bacon Slicing	9 Yrs.

[fol. 1458]

P. Ex. 90, p. 6

	Syracuse, N. Y.	Meat Warehouse	1 Yr.
		Bacon Slicing	
	Washington, D. C.	Meat Warehouse	4 Yrs.
		Bacon Slicing.	
Jay C. Groub Co.	Seymour, Ind.	Meat Warehouse	33 Yrs.
H. G. Hill Co.	Nashville, Tenn.	Meat Warehouse	8 Yrs.
		Sausage Making	
		Bacon Slicing	
(240 stores)	Chattanooga, Tenn.	Meat Warehouse	
(40 markets)		Bacon Slicing	
H. G. Hill Stores, Inc.	New Orleans, La.	Bacon Slicing	7 Yrs.
(110 stores)			
(31 markets)			
Hill Groc. Co.	Birmingham, Ala.	Meat Warehouse	10 Yrs.
(269 stores)		Bacon Slicing	
(105 markets)			
	Montgomery, Ala.	Bacon Slicing	5 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Hoegner & Canteeniny	Lima, O	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	4 Yrs.
R. Horky (16 markets)	Chicago, Ill	Meat Warehouse Sausage Making Meat Processing	3 Yrs.
Home Stores, Inc (35 stores)	Chattanooga, Tenn	Meat Warehouse Bacon Slicing	
Max Kollner & Co., Inc	Jamaica, N. Y	Meat Warehouse Meat Processing Sausage Making	12 Yrs.
Kroger Grocery & Baking Co (5575 stores) (3191 markets)	Cincinnati, O		22 Yrs.
	Columbus, O	Meat Warehouse Sausage Making (continued)	1 Yr.

Columbus, O. (continued)		Bacon Slicing Meat Cutting Meat Processing Slaughtering	
Dayton, O.		Meat Warehouse	4 Yrs.
Detroit, Mich.		Meat Warehouse Sausage Making	7 Yrs.
Grand Rapids, Mich.		Meat Warehouse Bacon Slicing	4 Yrs.
Herrin, Ill.		Meat Warehouse	2 Yrs.
Huntington, W. Va.		Meat Warehouse	2 Yrs.
Little Rock, Ark.		Meat Warehouse Bacon Slicing	2 Yrs.
Madison, Wis.		Meat Warehouse	2 Yrs.
Memphis, Tenn.		Meat Warehouse Bacon Slicing	10 Yrs.
Roanoke, Va.		Meat Warehouse	3 Yrs.
Loblaw Groceteria Co. (119 stores)	Chicago, Ill.	Bacon Slicing	1-1/2 Yrs.
	Buffalo, N. Y.	Bacon Slicing	2 Yrs.
Logan Bros. Co. (144 stores)	Bridgeport, Conn.	Bacon Slicing	4 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Lubbock Wholesale Meat Co.	Lubbock, Texas	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	1-1/2 Yrs.
M. & H. Stores (15 stores) (5 markets)	York, Pa	Meat Warehouse	
[fol. 1460]	P. Ex. 90, p. 8		
McMarr Stores (1394 stores) (345 markets)	San Francisco, Calif	Meat Warehouse Bacon Slicing	1-1/2 Yrs.
	Klamath Falls, Ore	Meat Warehouse Smoked Meats	
	Denver, Colo	Meat Warehouse. Bacon Slicing. Meat Cutting	
F. Major Markets (2 markets)	Mishawaka, Ind	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	50 Yrs.

McCarty-Holman Co	Jackson, Miss.	Sausage Making Bacon Slicing Meat Processing	2 Yrs.
McDonald Packing Co. (12 markets)	Lubbock, Texas	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	7 yrs.
Merkel Bros., Inc (Subsidiary of Adolph Gobel, Inc.)	Jamaica, N. Y.	Meat Warehouse Sausage Making Bacon Slicing Meat Processing	15 Yrs.
Mid-West Wholesale Groc. Co (6 stores) (6 markets)	DuQuoin, Ill.	Meat Warehouse	3 Yrs.
Miles & Botts (16 stores) (3 markets)	Metropolis, Ill	Meat Warehouse	6 Yrs.
Milner Prov. Co	Frankfort, Ind.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	10 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Modern Markets (15 stores) (15 markets)	Gallipolis, O	Meat Warehouse	3 Yrs.
Mutual Groc. Co (404 stores) (117 markets)	Newark, N. J.	Meat Warehouse Meat Cutting	2 Yrs.
Mutual Produce Co (Star Market Co.) (8 markets)	Chicago, Ill	Meat Warehouse Meat Processing	6 Yrs.
National Food Stores Co (8 stores) (8 markets)	Dodge City, Kans.	Slaughtering	1 Yr.
National Tea Co (1604 stores) (185 markets)	Minneapolis, Minn	Meat Warehouse	4 Yrs.
Oakleys Econ. Stores (83 stores) (48 markets)	Terre Haute, Ind	Meat Warehouse Sausage Making Meat Cutting	20 Yrs.
L. Oppenheimer, Inc. (85 stores) (85 markets)	New York, N. Y	Meat Warehouse Meat Cutting Meat Processing	17 Yrs.

David Pender Groc. Co.	Norfolk, Va.	Meat Warehouse	15 Yrs.
(410 stores)		Bacon Slicing	
(410 stores)			
(58 markets)			
	Richmond, Va.	Meat Warehouse	3 Yrs.
	Charlotte, N. C.	Meat Warehouse	
		Bacon Slicing	
K. W. Rogers	Dyersburg, Tenn	Meat Warehouse	21 Yrs.
(7 stores)			
(5 markets)			
Roughan Grocery Co.	Vincennes, Ind.	Meat Warehouse	10 Yrs.
(29 stores)			
(5 markets)			
Sanitary Grocery Co	Richmond, Va.	Meat Warehouse	2 Yrs.
(Subsidiary of Safeway Stores, Inc.)	Baltimore, Md.	Meat Warehouse	1-1/2 Yrs.
	Washington, D. C.	Meat Warehouse	18 Yrs.

[fol. 1462]

P. Ex. 90, p. 10

Clarence Saunders Corp	Memphis, Tenn	Meat Warehouse	3 Yrs.
		Bacon Slicing	
	Nashville, Tenn	Meat Warehouse	3 Yrs.
	Montgomery, Ala.	Bacon Slicing	3 Yrs.
A. W. Sewell Co.	Salt Lake City, Utah	Bacon Slicing	1 Yr.
(13 stores)		Meat Cutting	

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Shaffer Stores Co (81 stores) (60 markets)	Tyrone, Pa.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	1-1/2 Yrs.
E. G. Shinner & Co (51 stores)	Chicago, Ill.	Meat Warehouse	3 Yrs.
O. P. Skaggs (Utah Stores Co.)	Salt Lake City	Bacon Slicing Meat Cutting	1 Yr.
J. A. Skinner Stores (4 stores)	Albuquerque, N. M.	Meat Warehouse Meat Cutting	2 Yrs.
Standard Market Co (14 stores) (14 markets)	Salt Lake City, Utah	Bacon Slicing Meat Cutting Sausage Making	3 Yrs.
Nathan Strauss, Inc (226 markets)	Brooklyn, N. Y.	Meat Warehouse	22 Yrs.
Tradewater Groc. Co (18 stores) (5 markets)	Madisonville, Ky.	Meat Warehouse	2 Yrs.
Max Truns Pork Stores, Inc (33 markets)	Brooklyn, N. Y.	Meat Warehouse Meat Processing	25 Yrs.

		Sausage Making Bacon Slicing	
Union Meat Stores (10 markets)	Harrisburg, Pa.	Meat Warehouse Meat Processing	3 Yrs.
United Groceries & Markets, Inc.	Seattle, Wash.	Meat Warehouse	

[fol. 1463] P. Ex. 90, p. 11

United Markets, Inc.	Tampa, Fla.	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing	7 Yrs.
The U. S. Stores Corp. (945 stores) (56 markets)	Columbus, O.	Meat Warehouse	
Weis Pure Food Stores (107 stores) (12 markets)	Sunbury, Pa.	Meat Warehouse Sausage Making	12 Yrs.
Western States Groc. Co. (Owned by Safeway Stores Co.)	Oakland, Calif.	Meat Warehouse Bacon Slicing	1/2 Yr.
	Portland, Oregon	Meat Warehouse	1-1/2 Yrs.
	Denver, Colo.	Meat Warehouse	1 Yr.
	Salt Lake City, Utah	Meat Warehouse	3 Yrs.

Name of firm	Location of establishment	Meat packing operations performed	How long carried on
Wichita Meat & Prov. Co	Wichita Falls, Texas	Meat Warehouse Meat Cutting	1 Yr.
The Winn-Lovett Co (96 stores) (58 markets)	Jacksonville, Fla	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting	3 Yrs.
D. L. Wood & Sons "Wood Way Stores" (13 stores) (11 markets)	Benton, Ill	Meat Warehouse	6 Yrs.
Workman's Cash Markets (15 stores) (15 markets)	Clearfield, Pa Philipsburg, Pa	Meat Warehouse Sausage Making Bacon Slicing Meat Cutting Meat Processing Slaughtering	1/2 Yr.
Wright's Markets, Inc. (10 stores) (9 markets)	Lima, O	Sausage Making Bacon Slicing	5 Yrs.
Young's Market Co., Inc (46 stores) (46 markets)	Los Angeles, Calif	Meat Warehouse Sausage Making Meat Cutting Meat Processing	15 Yrs.

[fol. 1464]

Pet. Ex. 105

Armour and Morris Combined

	Sales	Net worth Capital and surplus	Net results	Result to sales $1.00	Result to sales $100	Result to sales $1,000	% on net worth
1920	$1,260,280,428	$265,096,000	$2,365,000	.00188	.188	1.88	.89
1921	842,406,895	284,653,000	43,158,000R*	.05123R	5.123R	51.23R	15.16R
1922	864,715,942(a)	255,457,000(a)	10,175,000(a)R	.01177R	1.177R	11.77R	3.98R
1923	882,420,738	298,456,000	15,691,000	.01778	1.778	17.78	5.26
1924	875,406,599	278,587,000	18,310,000	.02091	2.091	20.91	6.57
1925	970,388,953(b)	286,921,000(b)	14,452,000(b)	.01488	1.488	14.88	5.04
1926	808,648,211(c)	286,476,000(c)	8,148,000(c)	.01007	1.007	10.07	2.84
1927	961,132,269	286,519,000	538,000	.00055	.055	.55	.19
1928	972,799,398	277,241,000	11,326,000	.01164	1.164	11.64	4.09
1929	1,004,196,488(d)	276,956,000(d)	9,811,000(d)	.00976	.976	9.76	3.54

*Deficit.
(a) 61 weeks.
(b) 53 weeks.
(c) 42 weeks.
(d) 53 weeks.

[fol. 1465]

Pet. Ex. 106

Armour and Company

1920	$906,203,251	$208,869,000	$5,320,000	.00587	.587	5.87	2.547
1921	609,907,492	231,381,000	31,710,000R	.05199R	5.199R	51.99R	13.705R
1922	651,146,136(a)	214,158,000	7,629,000(a)R	.01172R	1.172R	11.72R	3.562R
1923	882,420,738	298,456,000	15,691,000	.01778	1.778	17.78	5.257

(a) 61 weeks.

Morris and Company

1920	$354,077,177	$56,227,000	$2,955,000	.00836 Red	$ .835 Red	$ 8.35 Red	5.255Red
1921	232,499,401	53,272,000	11,448,000 Red	.04924 Red	4.924 Red	49.24 Red	21.490Red
1922	213,569,806	41,299,000	2,546,000 Red(b)	.01192 Red	1.192 Red	11.92 Red	6.165Red

(b) Up to October 28, 1922.

[fol. 1466] PET. EX. 107

Armour and Company and Subsidiaries

Domestic Dollar Sales of Edible Products for the Years 1920 to 1929, inclusive

(Including Morris & Co. for Years 1920, 1921, and 1922)

Year	
1920	$925,560,838
1921	629,248,902
1922	566,512,575
1923	612,407,304
1924	601,485,834
1925	678,804,271
1926	708,578,054
1927	693,580,325
1928	700,823,692
1929	723,808,394

[fol. 1467] PET. EX. 108

Armour and Company and Subsidiaries

Domestic Dollar Sales of Edible Meat and Meat Products for the Years 1920 to 1929, Inclusive

(Including Morris & Co. for Years 1920, 1921, and 1922)

Year	
1920	$698,077,776
1921	490,853,803
1922	446,862,924
1923	485,935,763
1924	474,690,009
1925	533,232,888
1926	561,380,991
1927	534,679,670
1928	537,052,054
1929	562,642,631

[fol. 1468] PET. EX. 109

The Following Table Indicates Who Armour and Company's Customers Are Composed of

	Percent to total
Independent Grocery and Meat Stores (Including voluntary chains)	50.9
Chain Grocery and Meat Stores	17.2
Restaurants, Cafeterias, Hotels, etc.	6.9
Schools and Colleges	2.6
Bakers	2.3
Sausage Makers	3.1
Meat Peddlers	3.1
Wholesalers	2.
Meat Jobbers	6.4
Department Stores	.4
Manufacturing (Industrial)	2.4
All Others	2.7
	100.%

[fol. 1469] PET. EX. 110

Armour and Company Chain Store Sales

Year 1928	$63,400,000
" 1929	73,700,000
" 1930	85,400,000
Year 1930 sales to largest single customer	$25,027,836
Per cent to total	29.3

(Here follows Pet. Ex. 111, side folio 1470)

1470]

PET. EX. 111

Armour and Company

(in Thousands)

	Net dollar sales	Net result before Federal taxes and depreciation	Net earnings available for dividends	Dividends declared		Credits to surplus	Net worth at end of year	Capital stock outstanding at end of year	
				Preferred	Common			Preferred	Common
20—52 weeks	$906,203	$10,043	$5,320	$3,088	$2,000	.....	$231,382	$50,670	$100,000
21—52 weeks	609,907	31,078 Loss	31,710 Loss	3,547	2,000	20,000 (1)	214,158	50,671	100,032
22—61 weeks	651,146	610	7,629 Loss	4,434	.....	9,625 (1)	259,704	119,295	109,032
23—52 weeks	816,269	23,670	15,691	8,358	.....	.....	278,587	132,762	100,034
24—52 weeks	875,409	27,465	18,310	9,293	.....	.....	286,921	132,114	100,000
25—53 weeks	970,388	23,722	14,452	9,248	5,000	.....	286,476	131,465	100,000
26—43 weeks	808,648	16,811	8,149	6,902	1,000	.....	286,520	131,465	100,000
27—52 weeks	961,132	9,680	588	9,169	.....	.....	277,241	130,816	100,000
28—52 weeks	972,799	20,316	11,326	9,080	.....	.....	276,956	130,168	100,000
29—53 weeks	1,004,196	18,855	9,811	8,992	.....	.....	276,658	129,519	100,000

(1) Property appreciation.

Armour and Company and Morris and Company Combined

ear	Net dollar sales	Net earnings available for dividends
20	$1,260,280	$2,365
21	842,407	43,158 Loss
22	864,716	10,175 Loss
23	882,421	15,691

[fol. 1471] PET. EX. 112

Armour and Company

Details of Net Worth (at End of Year)

	Capital Stock					
	Preferred					
	Illinois	Delaware	N.A.P. Co.	Common	Surplus	Total net worth
1920.....	$50,670	.....	.....	$100,000	$80,711	$231,381
1921.....	50,671	.....	.....	100,032	63,455	214,158
1922.....	59,295	$60,000	.....	100,032	40,376	259,703
1923.....	59,298	64,864	$8,600	100,034	45,791	278,587
1924.....	59,298	64,216	8,600	100,000	54,807	286,921
1925.....	59,298	63,567	8,600	100,000	55,011	286,476
1926.....	59,298	63,567	8,600	100,000	55,055	286,520
1927.....	59,298	62,918	8,600	100,000	46,424	277,240
1928.....	59,298	62,270	8,600	100,000	46,788	276,956
1929.....	59,298	61,621	8,600	100,000	47,139	276,658

[fol. 1472] PET. EX. 113

Armour Sales to Trade of Unrelated Lines, Years 1919 to 1930, Inclusive

1919—52	Weeks	.....	$40,148,733*
1920—52	"	.....	34,738,039*
1921—52	"	.....	11,159,796*
1922—61	"	.....	5,372,591*
1923—52	"	.....	3,132,607*
1924—52	"	.....	2,318,318
1925—53	"	.....	2,475,862
1926—43	"	.....	3,496,190
1927—52	"	.....	6,343,329
1928—52	"	.....	6,642,250
1929—53	"	.....	7,307,962
1930—47	"	to September 27	4,386,971

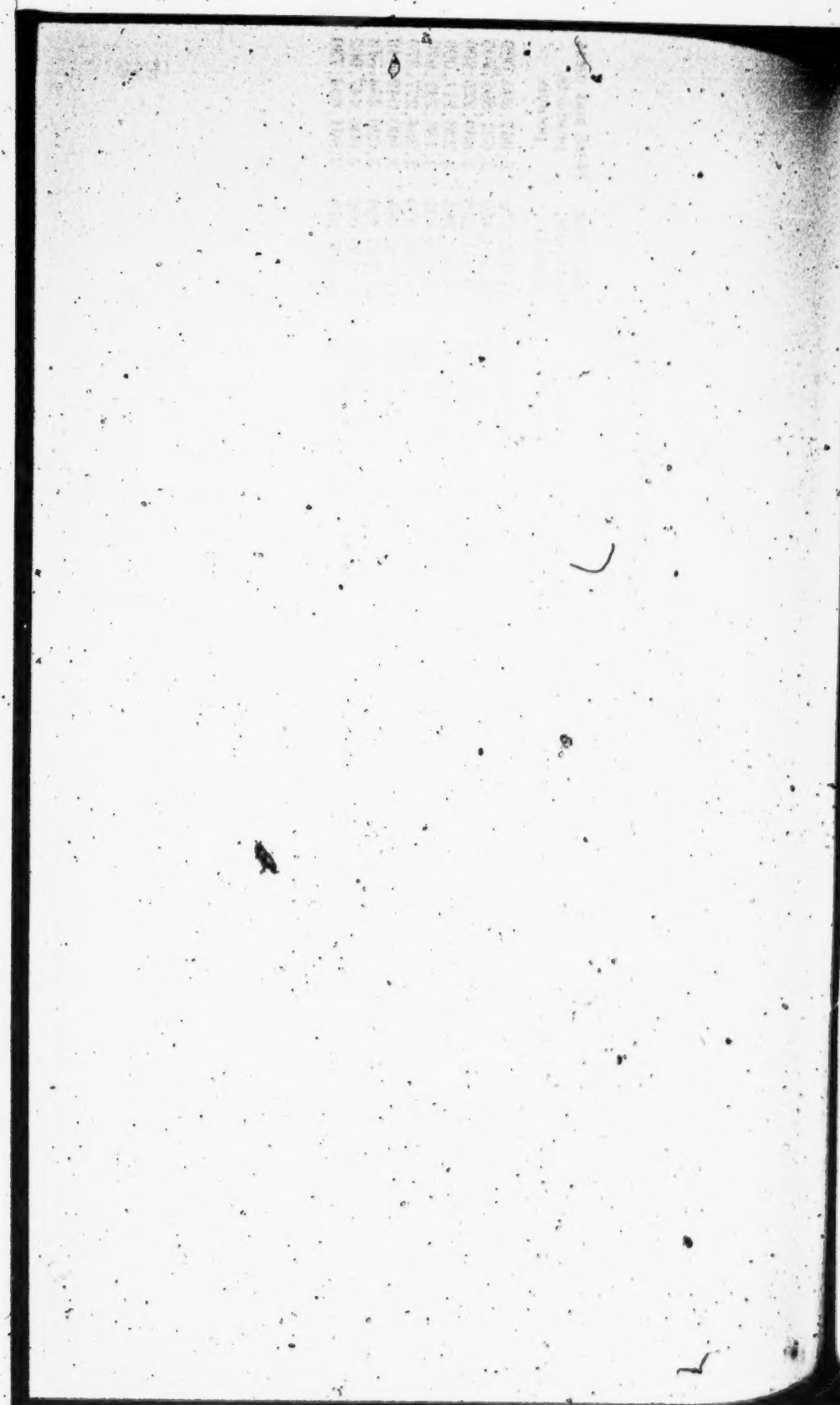
*Includes Morris & Co.

(Here follows Pet. Ex. 114, side folio 1473)

Armour and Company and Subsidiaries' Domestic Sales Tonnage, 1920 to 1929, Inclusive

(Including Morris and Co. and Subsidiaries for the Years 1920 to 1922, Inclusive)

ar	Butter, pounds	Eggs, cases	Poultry, pounds	Cheese, pounds	Oleomargarine, pounds	Lard substitutes, pounds	Hides, pounds	Canned and dried fruits, pounds	Meat and meat products, pounds
20	104,790,889	2,272,693	63,635,391	81,965,150	45,893,009	113,346,841	153,622,459	73,185,576	2,967,396,000
21	92,117,681	1,997,838	55,939,449	72,052,444	22,001,950	122,958,307	125,327,765	39,328,459	2,631,502,705
22	91,961,175	1,994,443	55,844,410	71,930,027	19,036,560	102,562,404	136,043,163	6,581,438	2,669,275,800
23	94,288,000	2,044,110	57,258,000	73,750,000	28,811,347	96,915,250	146,852,039	1,992,755	3,236,211,000
24	86,621,000	2,226,371	55,129,000	72,098,000	27,254,883	121,887,314	141,934,129	3,020,893	3,186,247,970
25	96,018,000	2,105,324	58,167,000	75,134,000	33,878,364	166,539,766	163,648,352	4,969,900	3,084,227,370
26	102,950,000	2,174,463	54,663,000	79,487,000	37,240,008	164,709,132	158,462,435	17,146,485	3,090,042,340
27	109,240,000	2,262,833	66,173,000	72,789,000	42,099,485	190,110,502	141,449,672	34,793,996	3,026,383,873
28	108,243,000	2,178,866	69,903,000	68,939,000	49,281,097	163,541,740	123,425,799	42,750,000	2,906,447,962
29	101,754,000	2,242,507	71,789,000	70,921,000	55,320,044	164,935,792	123,683,760	48,495,976	2,891,634,780



[fol. 1474] Pet. Ex. 119—M. D. R., Oct. 28, '30

Armour and Company, Including Morris and Company

Number of Branches, 1920 to 1930, Inclusive

October 30, 1920	557
October 29, 1921	545
December 30, 1922	523
December 29, 1923	519
December 27, 1924	516
January 2, 1926	512
October 30, 1926	498
October 29, 1927	483
October 27, 1928	468
November 2, 1929	402
September 1, 1930	391

[fol. 1475] Pet. Ex. 120—M. D. R., Oct. 28, '30

Armour and Company, Including Morris and Company

Branch House Sales, 1920 to 1929, Inclusive

Year	
1920	$681,792,969
1921	488,526,478
1922	447,783,387
1923	493,392,657
1924	494,019,559
1925	551,940,310
1926	572,598,867
1927	551,753,001
1928	554,172,812
1929	571,792,824

[fol. 1476] PET. EX. 121—M. D. R., OCT. 28, '30

Armour and Company

Cars Owned

October 30, 1920	4,965**
October 29, 1921	4,861**
December 30, 1922	4,845**
December 29, 1923	7,650*
December 27, 1924	7,402
January 2, 1926	7,190
October 30, 1926	7,301
October 29, 1927	7,070
October 27, 1928	6,723
November 2, 1929	6,766

* Acquired from Morris & Co., 3,081 cars.
** Does not include Morris cars.

1920 Armour Cars	4,965
Morris owned cars	2,943
Total October 30, 1920	7,908
" Nov. 2, 1929	6,766
Decrease	1,142
Percent decrease	14.4

[fol. 1477] PET. EX. 122—M. D. R., OCT. 28, '30

Armour and Company

Number of Car Routes (At End of Year)

1920	761*
1921	727*
1922	733*
1923	650
1924	643
1925	594
1926	531
1927	537
1928	519
1929	410
1930 September 1	317

* Includes Morris & Co. car routes.

[fol. 1478] PET. EX. 123—M. D. R., OCT. 28, '30

Number of Towns Served by Armour and Company, Branch Houses and Car Routes, September, 1930

Total Number of Towns in Branch House Territories	16,032
Total Number of Towns in Car Route Territories	5,233

This includes all towns listed regardless of size.

[fol. 1479] PET. EX. 124—M. D. R., OCT. 28, '30

Dollar Purchases and Sales of Unrelated Commodities Made by Armour and Company Monthly Since August 1, 1929

		Purchases	Sales	Consignment sales
August,	1929	$410,871	$875,702	.....
September,	"	170,113	489,466	.....
October,	"	558,385	756,456	.....
November,	"	463,253	288,131	.....
December,	"	282,787	221,354	.....
January,	1930	268,724	320,116	.....
February,	"	319,794	413,148	.....
March,	"	369,102	353,885	$28,626
April,	"	189,244	336,303	51,813
May,	"	235,408	553,110	150,590
June,	"	96,513	323,635	75,932
July,	"	289,815	368,392	49,729
August,	"	350,729	415,496	57,273
September,	"	309,500	303,816	75,622

NOTE.—Purchases include goods from Armour and Company owned plant at Westfield, N. Y., and from National Fruit Canning Co., Seattle, Wash., which is 87½% owned by Armour and Company.

[fol. 1480] PET. EX. 127

Kraft-Phenix Cheese Corporation Acquired by National Dairy Products Corp.

History:

Incorporated in Illinois November 10, 1928, as successor to Kraft-Phenix Cheese Co.; Incorporated in Illinois September 20, 1924, as Kraft Cheese Co.; a consolidation of:

J. L. Kraft & Bros. Co., Chicago.
Kraft Bros. Cheese Co., Plymouth, Wisc.
Jacob Marty Co., Brodhead, Wisc.
Langlade County Creamery Co., Antigo, Wisc.
Penn-Kraft Co., Pittsburgh, Pa.

Name changed to Kraft-Phenix Cheese Co., February 23, 1928.

Company manufactures sterilized cheese, put up in tinfoil and cans, and through its subsidiaries manufactures mayonnaise, etc. Also does a jobbing business.

Principal manufacturing plants are located at Chicago, Ill., Plymouth, Green Bay, Sheboygan, Brodhead and Beaver Dam, Wisc., Pocatello, Idaho, San Francisco and Nacasio, Calif., Selma, Ala., Rotterdam, Holland, Lowville and So. Edmeston, N. Y., Melbourne, Australia, Montreal, Canada, Hayes, England, Milledgeville and Stockton, Ill., Concordville, Pa., Atlanta, Ga., and Bayamo, Cuba.

Subsidiaries—100% of common stock owned:

Kraft-Phenix Cheese Co. (Wis.).
Kraft-Phenix Cheese Co., Ltd. (Can.).
Kraft Cheese Co., Ltd. (Eng.).
Kraft Cheese Co., M. B. H. (Ger.).
Kraft-Phenix Dairies, Inc. (Wis.).
Phenix Cheese Co., Ltd. (Eng.).
Badger-Brodhead Cheese Co. (Wis.).
Bradley Cheese Co. (Pa.).
Cloverleaf Creameries, Inc. (Del.).
Food Specialties Dist. Co. (Ill.).
Grover-Ansted Cheese Co. (Ohio).
Lowville Cold Storage Co. (N. Y.).
Miller-Richardson Co., Inc. (N. Y.).
National Cheese Co. (Ill.).

C. A. Stranbel Co. (Wis.).
Valley Cheese Co. (Ohio).
Ward Dry Milk Co. (Minn.).

[fol. 1481] Majority of common stock owned in following companies:

Betz and Jay (Holl.)
Bitter Root-Ravalli Dairy Products Co. (Del.)
Cheney (C. R.) Co..
Dairy State Cold Storage Co. (Wis.)
International Wood Products Co. (Del.)
Kraft-Phenix Cheese Co. of Cuba.
Kraft-Walker Cheese Co., Pty., Ltd. (Australia.)
Laabs Cheese Co. (Wis.)
Maher Cheese Co. (Cal.)
North American Cold Storage Co. (Ill.)
Porter Cheese Co. (Mass.)
Sanchez Cheese Co. (Ill.)
Southern Dairies, Inc. (Del.)
Western Slope Cheese Co. (Col.)
Wheeler-Riddle Cheese Co. (N. Y.)
Winkley Cheese Co. (Wash.)

On May 12, 1930, stockholders approved acquisition of Company by National Dairy Products Corporation.

[fol. 1482]

PET. EX. 127

Financial Record of Kraft-Phenix Cheese Corporation, as Reported by Moody's Manual of Industrials

Year Ended	Sales	Moody Vol.	Net earnings available for dividends	Moody Vol.	Percent earned on sales	Total stockholders' investment (includes capital stock and surplus at the beginning of each year	Moody Vol.	Percent earned on total stockholders' investment
Dec. 31, 1922	$16,241,690	1924	$880,634	1924	5.42	.....	.....	.....
Mar. 31, 1923 (3 months)	4,041,029	1924	101,176	1924	2.50	$4,484,673	1924	9.02
Mar. 31, 1924	23,754,546	1926	997,221	1926	4.20	3,225,032	1924	.....
" " 1925	31,097,386	1926	1,417,331	1926	4.56	6,579,252	1926	21.54
Dec. 31, 1926	36,285,447	1930	507,766	1930	1.40	8,002,277	1926	6.35
" " 1927	37,386,915	1930	922,969	1930	2.47	12,239,685	1926	7.54
" " 1928	75,648,426	1930	2,155,610	1930	2.85	15,967,442	1928	13.50
" " 1929	86,393,675	1930	3,502,840	1930	4.05	27,204,957	1930	12.87
1930	.....	....	.....	....	....	46,755,485	1930	.....

Year ended	Total assets at beginning of each year	Moody Vol.	Percent earned on total assets
Dec. 31, 1922	.....	.....	.....
Mar. 31, 1923 (3 months)	$7,263,045	1924	5.57
Mar. 31, 1924	4,499,729(1)	1924	.....
" " 1925	10,155,641	1926	13.96
Dec. 31, 1926	13,905,029	1926	3.65
" " 1927	15,431,569	1926	5.98
" " 1928	25,821,866	1928	8.35
" " 1929	38,953,243	1930	8.99
1930	51,286,763	1930	.....

(1) Not consolidated.

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1926 " " 1607
1928 " " 2467
1930 " " 2288

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PET. EX. No. 135

Wholesalers Who Own Retail Stores

Wholesaler	Location	Total stores		Meat stores	
		1920	1930	1920	1930
Abbott-Gwaltney Co., Inc.	Norfolk, Va.	.....	29	.....	2
The Fred N. Albrecht Grocery Co.	Akron, Ohio	50	123	.....	51
Allied Grocers, Inc.	Marshfield, Ore.	.....	15	.....	3
American Grocery Co.	Jacksonville, Fla.	30	40	15	25
Angelo Bros.	Winston-Salem, N. C.	.....	4	.....	1
Ardmore Flour & Feed Co.	Ardmore, Okla.	.....	4	.....	.....
Babbitt Bros. Trading Co.	Flagstaff, Ariz.	6	12	6	8
J. G. Ball Co.	Raleigh, N. C.	.....	6	.....	5
Batson Grocery Co.	Sylacauga, Ala.	.....	7	.....	2
Bell Grocery Co., Inc.	Pineville, Ky.	.....	8	.....	10
Belton Who. Grocery Co.	Greenville, S. C.	.....	29	.....	1
Bibee Grocery Co., Inc.	Lynchburg, Va.	.....	7	.....	6
A. Blanton Grocery Co.	Marion, N. C.	.....	19	.....	19
F. K. Brown Co.	Brookville, Pa.	.....	5	.....	4
Geo. Bubb & Sons	Williamsport, Pa.	.....	32	.....	4
The Carolina Grocery Co.	Georgetown, S. C.	.....	4	.....	.....
Carolina Grocery Co.	Hamlet, N. C.	.....	5	.....	1
Carter Grocery Co., Inc.	Gainesville, Ga.	.....	2	.....	2
Carter Grocery Co.	Russellville, Ala.	.....	8	.....	8
Cash Economy Who. Gro. Co.	McKenzie, Tenn.	.....	24	.....	3
Cash & Carry Who. Gro.	Fall River, Mass.	.....	31	.....	20
Central Who. Grocery Co.	Columbia, S. C.	.....	12	.....	3
The Colorado Supply Co.	Denver, Colo.	15	18	15	15
J. F. Conrad Grocer Co.	St. Louis, Mo.	5	8	5	6
Cooper Grain & Grocery Co.	Cooper, Tex.	.....	3	.....	3
Corso Tedesco & Co., Inc.	Biloxi, Miss.	.....	3	.....	3
Cox Bros., Inc.	Columbus, Miss.	.....	6	.....	2
R. L. Craig & Co., Inc.	Los Angeles, Calif.	.....	30	.....	3
Consumers Food Stores, Inc.	Bridgeport, Ct.	.....	22	.....	.....
Daniel Grocery Co.	Murphysboro, Ill.	.....	11	.....	2
Daniel's, Inc.	La Grange, Ga.	.....	7	.....	1
Davis & Humphries	Lubbock, Tex.	.....	12	.....	8

PET. EX. No. 135—Continued

Wholesaler	Location	Total stores		Meat stores	
		1920	1930	1920	1930
Carolina Stores, Inc	Lenoir, N. C	.....	42	.....	19
Delchamps Grocery Co	Mobile, Ala	1	6	1	6
Thos. A. Dewire & Son	Somerville, Mass	.....	27	.....	.....
Dickson Who. Grocery Co	Dickson, Tenn	.....	5	.....	3
The Wm. H. Dunne Co., Inc	Norwich, N. Y	.....	125	.....	3
Durham Bros. & Co., Inc	Roanoke, Va	.....	24	.....	24
Eagle Grocery Co	Union, S. C	.....	2	.....	2
Ebbs Bros. & Co	Asheville, N. C	.....	8	.....	8
The Wm. Edwards Co	Cleveland, O	.....	23	.....	8
Eisner Grocery Co	Champaign, Ill	12	69	1	42
Rudolph Ensslen Sons	Reading, Pa	1	3	1	3
Erwin Who. Co., Inc	Spartanburg, S. C	.....	10	.....	10
Evans Terry Co	Laurel, Miss	.....	10	.....	10
Fairmont Feed & Storage Co	Fairmont, W. Va	.....	15	.....	12
G. Z. Faulconer & Co	Lexington, Ky	.....	6	.....	6
S. M. Flickinger Co., Inc	Buffalo, N. Y	150	400	.....	8
Foss Bros. Co., Inc	Olean, N. Y	2	2	2	2
A. Frey & Son	Paris, Ill	.....	2	.....	2
C. E. Geohegan Sons & Co., Inc	Chase City, Va	.....	15	.....	10
S. A. Glass	Lexington, Ky	17	30	15	30
[fol. 1484]					
D. C. Goff Co	DeQueen, Ark	.....	4	.....	.....
A. Gordon & Co., Inc	New London, Conn	.....	28	.....	9
The Grafton Feed & Storage Co	Grafton, W. Va	.....	16	.....	.....
Greenville Supply Co., Inc	Greenville, N. C	.....	10	.....	3
Greer, Autry & Sons	Mobile, Ala	20	35	.....	.....
The John C. Groub Co	Seymour, Ind	.....	30	.....	7
Harrisburg Who. Grocery Co	Harrisburg, Ill	7	7	7	7
Hasson Grocery Co	Meridian, Miss	.....	12	.....	3
Henke & Pillot, Inc	Houston, Texas	1	3	1	3
The Hickman & Lunbeck Grocery Co	Greeley, Colo	.....	4	.....	4
H. G. Hill Co., Inc	Nashville, Tenn	80	240	20	40
Hoagland-Robbins Co., Ltd	Long Beach, Cal	.....	5	.....	.....
Holleb & Co., Inc	Chicago, Ill	.....	17	.....	.....
Home Grocery Co., Inc	Louisville, Ky	.....	6	.....	.....
Hooven Mercantile Co	Mauch Chunk, Pa	.....	28	.....	1

Howard-Bobbitt Co	Sanford, N. C	.....		11	.....	1
Hudson Duncan & Co	Portland, Ore	.....		30	.....	13
Italo Trading Co., Inc	New York, N. Y	.....		6	.....	.....
Kane Milling & Grocery Co	Kane, Pa	.....		7	.....	2
Kelley Bros. Co	Atlanta, Ga	.....		3	.....	.....
Joyce-Pruit Co	Rosewell, N. M	7		10	.....	.....
C. D. Kenny Co	Baltimore, Md	35		100	.....	.....
The Kerr Co	Evansville, Ind	.....		12	.....	.....
King Food Prod. Supply Co	Troy, N. Y	1		18	.....	5
King Grocery Co	Columbus, Ga	.....		7	.....	4
Kingman & Everett, Inc	Macon, Ga	3		7	.....	1
Lakeland Grocery Co	Lakeland, Fla	.....		15	.....	.....
Lanier Bros	Atlanta, Ga	.....		3	.....	.....
W. W. Lassiter	Vicksburg, Miss	.....		5	.....	5
Lewis Who. Gro. Co	Pikeville, Ky	.....		4	.....	4
Ligon & Ledbetter Co	Anderson, S. C	6		10	1	.....
Littlejohn & Smith	Spartanburg, S. C	.....		2	.....	.....
The Tom Lyle Grocery Co., Inc	Meridian, Miss	.....		14	.....	14
Marchowsky-Portage Co	Portage, Wis	1		5	1	1
The Marr-Bridger Grocery Co	Joplin, Mo	8		15	2	6
The McLelland-Kennard Co	Barnesville, O	.....		41	.....	.....
Frank McDonald	Knoxville, Tenn	.....		63	.....	.....
McElvey-Futch Co	Valdosta, Ga	.....		4	.....	4
C. G. Meaker Co., Inc	Auburn, N. Y	8		9	.....	.....
Mexico Who. Grocery Co	Mexico, Mo	.....		28	.....	4
Miami Who. Grocery Co	Miami, Fla	2		2	.....	.....
The Miles-Botts Co., Inc	Metropolis, Ill	.....		16	.....	3
Mississippi Coast Grocery Co., Inc	Gulfport, Miss	.....		10	.....	9
Modern Grocery Co	Macon, Ga	1		18	.....	1
W. T. & C. C. Myers	Elkin, N. C	.....		2	.....	.....
National Grocer Co	Detroit, Mich	.....		318	.....	134
Navarro Who. Grocery Co	Corsicana, Tex	.....		5	.....	.....
Okanogan Who. Grocery Co	Okanogan, Wash	.....		6	.....	.....
Paradies & Rich	Atlanta, Ga	.....		2	.....	2
Paxton Who. Grocery Co	Danville, Ill	2		38	.....	2
Phelps Grocery Co	Henderson, Ky	.....		25	.....	.....

PET. EX. No. 135—Continued

Wholesalers	Location	Total stores		Meat stores	
		1920	1930	1920	1930
Clement Pizzutelli	Monongahela, Pa	.....	12	.....	.....
Quality Cash Stores, Inc	Jamestown, N. Y	5	58	.....	.....
Rogers & Prater	Atlanta, Ga	.....	9	.....	4
Frank C. Schilling Co	Green Bay, Wis	.....	30	.....	.....
Schwarz-Alexander Co., Inc	Corpus Christi, Tex	.....	5	.....	5
R. J. Smith & Co	Somerset, Ky	.....	2	.....	.....
So. Georgia Grocery Co	Quitman, Ga	.....	60	.....	3
Spot Cash Who. Grocery Co	Hopkinsville, Ky	.....	4	.....	3
[fol. 1485]					
The David Spruks Co	Scranton, Pa	.....	38	.....	.....
The State Grocery Co	Moundsville, W. Va	.....	22	.....	1
N. L. Stedman & Co	Halifax, N. C	13	15	3	5
Stock Growers' Merc. Co	Rock Springs, Wyo	2	5	1	1
R. L. Stratton & Co	Staunton, Va	.....	12	.....	.....
Tanner-Brice Co	Vidalia, Ga	.....	15	.....	4
Thurston & Kingsbury Co	Bangor, Me	.....	11	.....	.....
Tolerton & Warfield Co	Sioux City, Ia	2	105	.....	36
Tollison-Davenport Co	Baxley, Ga	.....	4	.....	.....
Trade Water Grocery Co	Madisonville, Ky	.....	18	.....	5
Tri-City Grocery Co	Granite City, Ill	5	15	5	15
Valley Who. Grocery	Sacramento, Cal	.....	2	.....	.....
James D. Walker	Herrin, Ill	.....	5	.....	5
The Weideman Company	Cleveland, O	.....	24	.....	.....
Wheeler-Perry Co., Inc	Tucson, Ariz	.....	5	.....	.....
Wheeler Who, Grocery Co., Inc	Marion, S. C	.....	7	.....	3
Wichita Falls Who. Grocery Co	Wichita Falls, Texas	.....	16	.....	16
Wildwood Gro. Co	Wildwood, N. J	.....	2	.....	1
Wilkinson Gaddis & Co	Newark, N. J	17	404	.....	117
J. E. Williams' Son	Shelbyville, Tenn	.....	5	.....	.....
Winn & Lovett Grocery Co	Jacksonville, Fla	.....	96	.....	58
Woodruff & Cantrell	Spartanburg, S. C	.....	6	.....	3

D. L. Woods & Sons, Inc	Benton, Ill	.....	13	.....	11
Woodworth & Co., Inc	Concord, N.H	.....	7	.....	5
Wooten Gro. Co	Idabel, Okla	2	7	.....	2
Wright Turner Grocery Co	Mineral Wells, Texas	.....	4	.....	4
W. F. Zimmerman Grocery, Inc	LaSalle, Ill	6	6	.....	.....
Grand total		525	3,735	102	1,028

[fol. 1486]

PETITIONER'S EX. 136

(Page 51 of Petition)

Swift & Company

Sales and Earnings Statistics for 10 Years

Year ended	Sales	Invested capital, capital and surplus*	Earnings	Earnings, % on invested capital	Profit per dollar of sales
Oct. 30, 1920	$1,052,039,000	$238,381,900	$5,170,383	2.2	.0049
Nov. 5, 1921	735,040,000	231,552,283	7,812,292 R**	3.4 R	.0106 R
Nov. 4, 1922	655,681,000	211,739,991	13,049,217	6.1	.0199
Nov. 3, 1923	761,369,000	212,789,208	13,184,619	6.2	.0173
Nov. 1, 1924	785,221,000	213,973,827	14,125,988	6.6	.0180
Oct. 31, 1925	892,102,000	216,099,815	15,379,152	7.1	.0172
Nov. 6, 1926	953,797,000	219,478,967	15,645,242	7.1	.0164
Nov. 5, 1927	931,486,000	223,124,200	12,202,493	5.4	.0131
Nov. 3, 1928	972,940,000	223,326,702	14,813,182	6.6	.0152
Nov. 2, 1929	1,035,263,000	226,139,884	13,076,815	5.8	.0126

*Beginning of year. **Deficit. Source: Annual reports.

[fol. 1487] PETITIONER'S EX. 137

Swift and Company

Sales of Edible Products in U. S. A., Year 1929

Branch Houses	$599,726,000
Car Routes	154,129,000
United Dressed Beef Co., New York	18,693,000
East Side Beef Corporation, New York	1,527,000
New York Veal & Mutton Co., New York	5,220,000
J. J. Harrington & Co. " "	11,503,000
Swift & Co., Harrison, N. J.	4,482,000
H. C. Derby Co., New York	2,032,000
" Philadelphia	1,119,000
Eckerson Co., Jersey City	2,058,000
Van Wagenen & Schickhaus Co., Newark	5,548,000
Sturtevant and Haley Beef & Supply Co., Boston	2,639,000
Refineries	1,568,000
Produce Plants	4,585,000
East Cambridge Margarine Factory	310,000
E. K. Pond Company, Chicago	801,000
Hotel Supply Companies	4,793,000
V. W. Joyner & Company	164,000
Brokers	5,187,000
	826,084,000
Minus Soap Sold	9,834,000
Total	$816,250,000

[fol. 1488] PETITIONER'S EX. 138

U. S. Production of Butter, in Thousands of Pounds, Years 1920 to 1929, Incl.

Calendar year	Total U. S. production (000 omitted)	Swift and Company sales (000 omitted)	Swift and Company % to total production
1920	1,558,380	74,951	4.81
1921	1,736,741	79,297	4.57
1922	1,822,318	83,824	4.60
1923	1,898,017	86,009	4.53
1924	1,998,883	86,316	4.32

Calendar year	Total U. S. production (000 omitted)	Swift and Company sales (000 omitted)	Swift and Company % to total production
1925	1,991,329	91,099	4.57
1926	2,066,766	98,059	4.74
1927	2,096,495	104,793	5.00
1928	2,077,049	110,636	5.32
1929	2,177,027	121,639	5.59

[fol. 1489] PETITIONER'S Ex. 139

Total U. S. Consumption of Cheese Yearly, 1920 to 1929, Incl.

Calendar year	Total U. S. consumption of cheese (thousand pounds)	Swift and Company sales (thousand pounds)	Swift and Company sales % of consumption in U. S.
1920	405,545	67,329	16.60
1921	407,823	60,240	14.77
1922	440,296	62,705	14.24
1923	464,325	64,450	13.88
1924	521,826	67,077	12.85
1925	547,121	69,067	12.62
1926	578,456	72,433	12.52
1927	566,679	74,294	13.11
1928	581,525	73,476	12.62
1929	657,717	78,626	11.95

[fol. 1490] PETITIONER'S Ex. 140

Estimated Dressed Weight of Poultry Raised Total U. S., Years 1920 to 1929, Incl.

Year	Estimated dressed weight of poultry raised figuring 4 lbs. each (millions of lbs.)	Swift and Company sales (millions of lbs.)	Swift and Company % of total
1920	1,310	75	5.73
1921	1,546	72	4.66
1922	1,699	74	4.36
1923	2,050	85	4.15
1924	2,183	84	3.85
1925	1,948	93	4.77
1926	2,170	98	4.52
1927	2,061	111	5.39
1928	2,135	114	5.34
1929	2,323	119	5.12

[fol. 1491] PETITIONER'S Ex. 141

U. S. Egg Production, Years 1920 to 1929, Incl.

Year	Estimated production based on receipts 5 mkts. (millions of doz.)	Swift and Company sales (millions of doz.)	Swift and Company % of total
1920	1,607	86	5.35
1921	1,863	81	4.35
1922	1,990	90	4.32
1923	2,072	94	4.54
1924	1,913	93	4.86
1925	1,928	93	4.82
1926	1,926	115	5.97
1927	2,012	117	5.81
1928	2,003	119	5.94
1929	1,951	121	6.20

[fol. 1492] PETITIONER'S Ex. 142

Sales by Swift & Co. and Subsidiaries

Year	Meats and meat products, pounds	Oleomargarine, pounds	Lard substitutes, pounds	Hides, pounds
1920	2,587,234,000	56,568,500	128,162,700	89,395,804
1921	2,490,600,000	29,013,000	140,723,100	123,241,300
1922	2,538,233,000	21,630,200	110,239,500	96,634,500
1923	3,029,470,000	33,190,700	113,839,400	115,631,200
1924	3,022,075,000	37,440,900	133,915,800	117,146,800
1925	3,038,193,000	36,262,100	193,259,600	131,068,900
1926	3,090,389,000	44,516,200	229,321,500	135,014,200
1927	3,106,148,000	47,458,200	249,924,700	135,261,700
1928	3,072,500,000	54,577,700	240,838,200	116,218,200
1929	3,188,709,000	72,473,300	265,521,500	112,656,600

[fol. 1493] PETITIONER'S Ex. 143

Number of Branch Houses, Refrigerator Cars, Car Routes at End Each Fiscal Year—1920 to 1929, Inc.

Year	Branch houses	Refrigerator cars	Car routes
1920	371	7113	721
1921	372	6996	681
1922	370	6480	656
1923	368	6423	722
1924	390	5816	746
1925	406	5244	786
1926	407	4787	801
1927	408	5065	880
1928	430	5357	1026
1929	431	5509	1014

[fol. 1494] PETITIONER'S EX. 144

Sales Made by all Branch Houses in United States Only During Each Fiscal Year

Year	Sales to trade
1920	$557,098,584
1921	425,502,683
1922	377,158,396
1923	423,262,408
1924	432,874,098
1925	495,759,889
1926	553,728,836
1927	543,508,552
1928	558,359,397
1929	599,170,477

(Petitioner's Exhibits 145 and 146 follow, side folios 1495 and 1496)

[fol. 1495]

PET. EX. 145

Branch House and Packing House Markets under Plant Jurisdiction in United
Expense and Expense per cwt.

Year	Volume Weight	Pay roll Amount	Pay roll Per cwt.	Rent Amount	Rent Per cwt.	B. E. general expense Amount	B. E. general expense Per cwt.	Delivery Amount	Delivery Per cwt.	Refrigeration Amount	Refrigeration Per cwt.	R Am
1923	2,501,994,200	10,751,400	.431	1,628,697	.044	1,102,697	.044	3,020,131	.121	879,899	.044	362
1924	2,568,341,700	11,861,626	.462	1,747,248	.068	1,258,760	.049	3,192,441	.124	908,089	.035	457
1925	2,605,319,000	12,608,625	.484	1,919,843	.074	1,530,564	.059	3,333,782	.128	948,502	.036	558
1926	2,689,391,800	13,360,657	.497	1,971,112	.073	1,497,588	.056	3,492,991	.130	926,101	.035	572
1927	2,767,920,900	13,729,196	.496	1,982,223	.072	1,432,840	.052	3,471,823	.125	957,251	.035	49
1928	2,708,016,600	13,898,111	.513	2,043,812	.075	1,564,454	.058	3,496,894	.129	957,963	.035	45
1929	2,801,660,000	14,634,685	.523	2,130,324	.077	1,889,284	.067	3,576,266	.124	979,442	.036	551
1930 (9 Mos.)	2,019,214,300	10,827,007	.536	1,608,620	.080	1,290,467	.064	2,583,045	.128	707,861	.035	29

Pounds per Ticket

	Volume	Sales tickets	Pounds per ticket
1923	2,510,994,200	21,384,560	117
1924	2,568,341,700	22,931,530	112
1925	2,605,319,000	24,812,562	105
1926	2,689,391,800	26,110,600	103
1927	2,767,920,900	26,096,320	103
1928	2,708,016,600	27,354,713	99
1929	2,801,660,000	29,183,333	96
1930 (9 Mos.)	2,019,214,300	21,712,300	93

Number of Branch Houses and Packing House Markets under Plant Jurisdict

	Number opened	Number closed	Total number perating in U. only
1923	1	3	368
1924	23	1	390
1925	17	1	406
1926	9	8	407
1927	4	3	408
1928	25	3	430
1929	4	3	431
1930 (9 Mos.)	12	24	419

[fol. 1496]

PET. EX. 146

United States Car Routes

Volume, Expense, and Expense per Cwt., 1923 to 1929, Incl.

	Volume, weight, lbs.	Expense—salesmen's salary & expense, including auto expense Amount	Per cwt.	Sales dept. at headquarters, traveling supervisor's salary & expense Amount	Per cwt.	Clerical staff at headquarters Amount	Per cwt.	Bad debts Amount	Per cwt.	Ic Am
1923	599,171,555	$3,302,346	.551	$496,035	.082	$719,451	.120	$167,458	.028	$3
1924	599,084,580	3,551,693	.593	556,156	.093	741,122	.123	136,125	.023	4
1925	607,162,533	3,587,421	.591	554,456	.091	698,517	.115	148,411	.024	4
1926	634,151,642	3,732,040	.589	614,813	.097	727,444	.115	211,672	.033	4
1927	669,825,019	3,829,164	.571	657,294	.098	748,022	.112	223,767	.033	4
1928	722,089,908	4,222,076	.585	740,294	.103	798,927	.111	230,878	.032	4
1929	788,789,033	4,542,880	.575	826,874	.105	865,119	.109	327,767	.042	4

	Nnmber of orders	Pounds per order
1923	2,906,902	206
1924	3,047,360	197
1925	3,082,432	197
1926	3,758,421	169
1927	3,950,479	170
1928	4,377,049	165
1929	4,780,587	165

Per. Ex. 145

and Packing House Markets under Plant Jurisdiction in United States Only
Expense and Expense per cwt.

xpense Per cwt.	Delivery Amount	Per cwt.	Refrigeration Amount	Per cwt.	Repairs Amount	Per cwt.	Suspense Amount	Per cwt.	Depreciation Amount	Per cwt.	Other expenses Amount	Per cwt.	Total Amount	Per cwt
.044	3,020,131	.121	879,899	.044	362,493	.014	455,592	.018	669,117	.027	2,270,276	.091	21,140,302	.845
.049	3,192,441	.124	908,089	.035	457,632	.018	494,749	.019	705,838	.028	2,216,642	.087	22,844,025	.890
.059	3,333,782	.128	948,502	.036	558,551	.021	636,544	.024	939,603	.036	2,382,346	.092	24,858,359	.954
.056	3,492,991	.130	926,101	.035	572,751	.021	791,988	.029	788,516	.029	2,515,553	.093	25,917,257	.963
.052	3,471,823	.125	957,251	.035	499,110	.018	867,581	.031	854,537	.031	2,427,659	.088	26,222,229	.948
.053	3,496,894	.129	957,963	.035	455,721	.017	862,066	.032	858,619	.032	2,140,606	.079	26,278,246	.970
.067	3,576,266	.124	979,442	.036	551,248	.020	880,824	.032	1,044,090	.037	1,832,509	.066	27,518,672	.982
.064	2,583,045	.128	707,861	.035	299,884	.015	628,280	.031	830,476	.041	1,225,571	.061	20,001,211	.991

ranch Houses and Packing House Markets under Plant Jurisdiction

	Number opened	Number closed	Total number operating in U. S. only
.....	1	3	368
.....	23	1	390
.....	17	1	406
.....	9	8	407
.....	4	3	408
.....	25	3	430
.....	4	3	431
).....	12	24	419

Per. Ex. 146

United States Car Routes

Volume, Expense, and Expense per Cwt., 1923 to 1929, Incl.

t. at head- traveling or's salary xpense		Clerical staff at headquarters		Bad debts		Icing & reicing		Telegrams, telephones, stationery, postage, price lists, etc.		Total expense	
	Per cwt.	Amount	Per cwt.	Amount	Per cwt.	Amount	Per cwt.	Amount	Per cwt.	Amount	Per cwt.
35	.082	$719,451	.120	$167,458	.028	$378,878	.063	$335,771	.056	$5,399,939	.900
56	.093	741,122	.123	136,125	.023	415,568	.069	341,577	.057	5,742,241	.958
56	.091	698,517	.115	148,411	.024	417,645	.069	347,304	.057	5,753,754	.947
13	.097	727,444	.115	211,672	.033	415,648	.068	544,964	.086	6,246,581	.986
94	.098	748,022	.112	223,767	.033	434,448	.065	480,883	.072	6,373,578	.951
94	.103	798,927	.111	230,878	.032	431,476	.060	465,275	.063	6,878,926	.954
74	.105	865,119	.109	327,767	.042	415,133	.053	521,288	.066	7,499,061	.950

[fol. 1497] PET. EX. 153

Number of Branches February 1920		
Armour	398	
Morris	167	
	—	565
Number of Armour Branches closed since February 1920		78
Number of Morris Branches closed since February 1920		115
Number of Armour Branches opened since February 1920		17
Number of Morris Branches opened since February 1920		2
NOTE.—Since 1920—13 Morris Branches have been changed to Armour and Company.		
Number of Branches September 1, 1930		
Armour	350	
Morris	41	
	—	391
Number of Branch Houses sold since February 1920		69
Sales Price		$1,324,237.44
Number of Idle Branches September 1, 1930		57
Number owned	25	
Lumber leased	32	
	—	57
Original Cost		$2,562,416.17
Book Value 9/1/30		1,900,346.27
Number of Closed Branches leased to Other People		6
Number of Idle Branches February 1, 1920		7
Number owned	2	
Number leased	5	
	—	7
Original Cost		$29,997.40
Book Value 2/1/20		27,038.36

[fol. 1498] PETITIONER'S EX. 155

Comparison Average Yearly Results

	8 years, 1920 to 1927, incl.	2 years, 1926-1927	2 years, 1928-1929	
Newark, N. J.	$20,023.46	$5,620.90 R	$35,571.94	
Newburgh, N. Y.	1,339.00	102.75 R	12,615.57	
New Rochelle, N. Y.	599.00 R*	5,060.67 R	6,040.67	R
Danbury, Conn.	4,930.00	3,619.33	598.80	
Bridgeport, Conn.	2,316.00	9,063.70	2,831.24	
Flushing, N. Y.	1,179.00	1,584.42	19,464.14	
Stapleton, N. Y.	140.00 R	1,075.23	8,926.48	
Bayonne, N. J.	4,358.00	3,712.46	5,855.76	R
Long Branch, N. J.	574.00	3,026.14	6,367.13	
Asbury Park, N. J.	3,785.00	7,126.53	2,667.09	
Morristown, N. J.	6,930.00	7,326.46	6,777.07	
New Brunswick, N. J.	4,522.00 R	2,491.14	7,628.34 R	
Elizabeth, N. J.	2,879.00	1,770.01 R	10,859.10 R	
Somerville, N. J.	3,887.00	4,039.21	334.07	
Orange, N. J.	6,145.00	3,871.00 R	1,842.00 R	
Port Jervis, N. Y.	14,722.00	11,715.94	3,970.68	
Middletown, N. Y.	40,758.00	26,305.60	9,813.21	
Port Chester, N. Y.	288.00 R	1,541.13	6,406.26 R	
Perth Amboy, N. J.	11,537.00	15,472.17	9,576.01	

*Deficit.

[fol. 1499] PETITIONER'S EX. 157

Department of Agriculture, Washington, D. C.

April 16, 1930.

Pursuant to Section 661, Title 28, of the United States Code, I hereby certify that the following and annexed are true, correct and compared mimeograph copies of the originals, on file in the United States Department of Agriculture, of the notice and complaint of the Secretary of Agriculture entitled "Armour and Company of Illinois, Armour and Company of Delaware, J. Ogden Armour, Morris and Company, Respondents", issued February 17, 1923, and Conclusion and Order of the Secretary of Agriculture entitled "Secretary of Agriculture, Complainant, v. Armour & Company of Illinois, Armour & Company of Delaware, North American Provision Company, J. Ogden Armour and Morris & Company, Respondents", issued September 14, 1925, in Packers and Stockyards Administration Docket No. 19.

Witness my hand and the seal of the United States Department of Agriculture.

R. W. Dunlap, Acting Secretary of Agriculture.

(Seal.)

[fol. 1500] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, PACKERS AND STOCKYARDS ADMINISTRATION

Docket No. 19

SECRETARY OF AGRICULTURE, Complainant,

v.

ARMOUR & COMPANY OF ILLINOIS, ARMOUR & COMPANY OF DELAWARE, North American Provision Company, J. Ogden Armour, and Morris & Company, Respondents

CONCLUSION AND ORDER

This proceeding had its inception in several conferences in November and December, 1922, between the then Secretary of Agriculture, Hon. Henry C. Wallace, and officials of Armour & Company, in which the Secretary was informed that there was under consideration a purchase by Armour & Company of the physical properties, business and goodwill of Morris & Company. These officials expressed to the Secretary the hope that the proposed purchase would not be found to be in violation of law and that it would not meet with the opposition of the Department of Agriculture. On November 22, 1922, the Secretary addressed an inquiry to the Attorney General as to whether the terms of the Packers and Stockyards Act contemplated or required him to take any action with regard to such transaction in advance of its consummation. To this the Attorney General replied that the Act did not require the Secretary to take any formal action unless he had reason to believe that the law had been violated or was being violated, and that to constitute a violation of the Act there must be something more than a mere statement of what a person or corporation contemplates. Concluding his opinion, the Attorney General added that the Act vested the Secretary with

broad powers of inquiry and that he might make such inquiry.

On December 22, 1922, in response to Senate Resolution 364 of December 6, 1922, Secretary Wallace informed the Senate of the conferences he had had with the officials of Armour & Company, of his request to the Attorney General for opinion above referred to, and the opinion. In this report he stated that he had given careful consideration to [fol. 1501] the Packers and Stockyards Act, particularly to that portion which makes it unlawful for any packer "to engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce." He then stated that there was nothing in the Act itself which specifically prohibited the purchase by one packer of the physical assets of another and that the question seemed to be whether out of such a transaction would flow conditions or conduct which would come within the prohibitions of the Act. He then referred to a conference between the President, the Attorney General and himself on November 27, at which there was unanimity of agreement that there was no obligation upon either of them to endorse or acquiesce in the action proposed or to express an opinion concerning it; that, on the contrary, each was firmly of the opinion that none of them would or could be expected to approve in advance a transaction of this kind; and that the real question under discussion was whether the proposed purchase and sale might, in and of itself, be a violation of the law, or whether it was of such a nature as to warrant action by any of them in advance of its consummation. He concluded his report to the Senate with the following paragraph:

For some weeks I have been making certain investigations and studies for the purpose of trying to measure the probable effect upon competition in the buying of livestock and the selling of meat if the suggested purchase and sale should be completed, but as yet no occasion seems to have arisen which requires formal action. As to future action, that will depend altogether upon future events.

On December 30, 1922, J. Ogden Armour, acting for himself and in behalf of Armour & Company of Illinois, entered

into a written contract with Morris & Company to acquire all the physical assets, business and good-will of Morris & Company.

[fol. 1502] Thereafter, on February 17, 1923, the Secretary, having learned of the execution of this contract, issued and caused to be served upon Armour & Company of Illinois, Armour & Company of Delaware, J. Ogden Armour, and Morris & Company, as respondents, a complaint charging, in paragraphs 9, 10 and 11, as follows:

That the acquisition of said assets and business of Morris and Company by the respondents, J. Ogden Armour and Armour and Company of Illinois or Armour and Company of Delaware, on the one hand, and the acquisition of the stock of Armour and Company of Illinois or of Delaware by Morris and Company, on the other hand, as provided for in said contract or contracts, has the tendency or effect of restraining interstate commerce or of creating a monopoly in many sections and communities in various states of the United States in the purchase of livestock and in the shipment and sale of meat and other livestock products in many sections and communities in various States of the United States and in foreign countries.

That in the making of said contract or contracts or the carrying out thereof, the respondents, J. Ogden Armour and Armour and Company of Illinois or Armour and Company of Delaware are engaged in a course of business and have done an act for the purpose or with the effect of manipulating or controlling prices in the buying of livestock and the sale and distribution of the products thereof in interstate and foreign commerce and for the purpose or with the effect of restraining interstate and foreign commerce or of creating or tending to create a monopoly therein.

That by the acquisition by Armour and Company of Illinois or Armour and Company of Delaware of the assets and business of Morris and Company, including the stock or share capital or business of other corporations owned in whole or in part by Morris and Company, the names of which corporations are contained in said contract or contracts and the schedule or schedules annexed thereto, and the acquisition by Morris and Company as set forth in this complaint of the stock or share capital of Armour and Company of Illinois or Delaware, the respondents have

combined, arranged and agreed to eliminate entirely the respondent Morris and Company as a competitor of the other respondents and to materially increase the power of the other respondents to control and dominate the livestock and meat-packing industry in the United States and [fol. 1503] foreign countries, thereby restraining interstate commerce in many sections and communities in the United States and foreign countries in the purchase of live stock and the sale of live stock products, or tending to create a monopoly in interstate and foreign commerce in the buying of livestock and the sale and distribution of the products thereof in the United States and foreign countries.

On March 24, 1923, J. Ogden Armour and the North American Provision Company entered into a supplemental written agreement with Morris & Company and all of its stockholders for the sale of the physical properties, business and good-will of Morris & Company and its subsidiaries to the North American Provision Company, a subsidiary of Armour & Company. This agreement modified the original agreement of December 30, 1922, by providing among other things that no stock or share capital owned in whole or in part by Morris & Company should be transferred to Armour & Company or its nominee, the North American Provision Company. By virtue of this provision in the supplemental agreement, the charge contained in paragraph 11 of the complaint is eliminated from consideration. The purchase was consummated on March 28, 1923, since which time Morris & Company has not engaged in the meat packing business.

On April 23, 1923, the respondents filed an answer in which they specifically denied that they had violated or were violating any of the provisions of the Packers and Stockyards Act, and further setting up as an affirmative defense that the purchase was made in good faith and as an economic and industrial necessity.

Upon the issues thus joined, hearings were commenced at Kansas City, Mo., on April 30, 1923, on which date the North American Provision Company was made a party respondent to the proceedings by and with its consent and that of the other respondents. These hearings proceeded [fol. 1504] from time to time and were finally concluded at Chicago on October 31, 1924. The record thus made

consists of 12,265 typewritten pages and several hundred exhibits.

At the close of the hearings on October 31, 1924, time was allowed until January 2, 1925, for counsel for the Government, and until February 21, 1925, for counsel for the respondents, to draft and submit for consideration of the Secretary proposed findings as to the facts. Such findings were prepared and submitted within the time allowed. Oral argument was had before me beginning on April 6, 1925, and concluding on April 11.

The provisions of the Packers and Stockyards Act which I conceive to be pertinent to this case are Title II, Section 202, subdivision (e), which reads as follows:

> It shall be unlawful for any packer to engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce.

Decision as to the legality of the acquisition by Armour & Company of the physical properties, business and good-will of Morris & Company involves, at the outset, consideration of the question whether such acquisition, in and of itself, constitutes a violation of the above cited provision of the Act. The purchase by one competitor of the physical properties, business and good-will of another competitor is not in express terms condemned by this statute. Since Congress is presumed to legislate with full knowledge of the subject-matter, it must be assumed, without adverting to the numerous hearings which had brought that knowledge specifically to them, that it knew of the existence of the so-called Big Five Packers and of such influence as they exercised, or were in a position to exercise, in the livestock and meat packing industry, and that [fol. 1505] it knew of the results which might flow from any acquisition by one packer, or one large packer, of the physical properties, business and good-will of another. With this background, it would have been very easy for Congress, when legislating to prevent evils in the packing industry, to have incorporated in its legislation a prohibition of the acquisition of the properties, business and good-will of one packer by another. The fact that it did not do

so argues that it did not intend to do so, but left open a field for the lawful and normal disposition of their properties by competitors subject to this Act. This conclusion is strengthened by the fact that in the Clayton Act the acquisition of the whole or any part of the stock or other share capital of a competitor, with the effect of substantially lessening competition, is forbidden in express terms. Manifestly, therefore, the purchase by Armour & Company of the physical properties, business and good-will of Morris & Company is not forbidden by the Act unless it be made for the purpose or with the effect of manipulating or controlling prices in the buying of livestock in commerce or in the sale and distribution of livestock products, or of creating a monopoly in the acquisition of, buying, selling, or dealing in such articles in commerce, or of restraining commerce.

The purchase by Armour & Company of the physical properties, business and good-will of Morris & Company creates no legal presumption of a purpose to accomplish the ends forbidden by the Act.

There is not in this record sufficient evidence upon which to base a conclusion that the acquisition of the physical properties, business and good-will of Morris & Company by Armour & Company was for the purpose of manipulating or controlling prices in the buying of livestock in commerce or in the sale or distribution of their products, or of creating a monopoly in the acquisition of, buying, selling, or dealing in such articles in commerce, or of restraining commerce. On the contrary, the evidence is persuasive that it was for [fol. 1506] the purpose of effecting economies in the conduct of Armour respondents' business by reducing overhead expenses and increasing the volume of sales of the finished products.

There remains, therefore, for consideration, whether this acquisition by Armour & Company has had the effect of manipulating or controlling prices in commerce, or of creating a monopoly, in the acquisition of, buying, selling, or dealing in any articles in commerce, or of restraining commerce.

The evidence in the record does not warrant the conclusion that the purchase by Armour & Company of the physical properties, business and good-will of Morris & Company has had the effect of unduly or arbitrarily lowering prices

to the shipper who sells livestock, or unduly and arbitrarily increasing the price of livestock products to the consumer who buys, or otherwise manipulating or controlling prices in commerce.

The evidence discloses that since the acquisition of Morris & Company by Armour & Company the latter has controlled less than 25 per cent of the Federal inspected slaughter and less than that controlled by Swift & Company. The undisputed evidence shows that competition on the whole in the sale of meats and meat food products in interstate commerce has not been diminished. Consequently, the acquisition has not had the effect of creating a monopoly.

The question still remains whether this acquisition has had the effect of restraining commerce. It is obvious that the elimination from business of one competitor resulting from the acquisition of his business by another competitor extinguishes competition between the two and may tend to lessen competition in that field of business, but since the decisions of the Supreme Court of the United States in the Standard Oil and Steel cases (Standard Oil Co. v. United States, 221 U. S. 1; United States v. United States Steel [fol. 1507] Corporation, 251 U. S. 417), it has been settled law that the mere lessening of competition through the acquisition of one competitor by another does not amount to an unlawful restraint of trade or commerce. While Morris & Company has been eliminated as a competitor it does not necessarily follow that competition as a whole has been thereby reduced. It may be said with very good reason that the merger has resulted in making of Armour & Company a more potential competitor of the largest existing packer, Swift & Company.

As was said in the Steel case, "the law does not make mere size an offense or the existence of unexerted power an offense," but in order that such a combination may be declared unlawful, it must be shown to have restrained trade or commerce unreasonably or unduly, or that the power thereby acquired is being used for the accomplishment of the evil which the law was aimed to prevent. In the Steel case, the control secured by the various acquisitions was about 45 per cent. In the Quaker Oats case (232 Fed. 499) the control secured by the acquisitions was approximately 60 per cent, yet the court held that this did not

constitute a violation of the Anti-Trust Laws. In its opinion in this case, the Court said:

Every purchase between two people in the same business, one buying out the other, is necessarily a lessening of competition, but as long as the property is such that the fullest opportunity for countrywide competition exists, the field being open to everybody with but small capital, there being no patent rights, there being no other hindrance to the development of individual enterprise, I fail to see anything undue, anything unreasonable, in the restriction of competition that results, although it be the largest of the several competing firms that buys out the second largest.

This language has peculiar application to the case before me.

Much evidence was introduced both by the Government and the respondents as to the effect of competition before and since the acquisition. The overwhelming weight of the testimony is in favor of the view that competition has not [fol. 1508] been materially lessened by reason thereof, either in the buying of livestock or the sale of the meat or meat products thereof. Scores of independent packers were called by the respondents and they all testified that in the handling and sale of meat and meat food products competition has been keen and active. Many large retail dealers scattered throughout the country were placed on the stand by the respondents and they testified that competition was keen and active and that no unfair practices or coercive methods had been engaged in by Armour & Company. The evidence further discloses that during the last decade both the number of independent packers of substantial size and the volume of business done by them have largely increased.

My understanding is that the cases involving the merger of competing railroad systems or the acquisition by corporations of the stock or share capital of competitors in violation of the express prohibition of Section 7 of the Clayton Act are not applicable to this case. It undoubtedly is true that the Supreme Court has distinguished between combinations of public utilities and combinations of industrials, holding combinations of the former class to be unlawful without regard to the purposes of their formation or their effect on competitive conditions generally. While the Packers and Stockyards Act apparently classes stockyards as

public utilities, it has not impressed the packing business with a public use, and combinations of packers are to be treated as industrial combinations.

In the argument before me it was suggested that the lack of change in competitive conditions since the acquisition was more apparent than real, due, perhaps, to the pendency of this proceeding, and that the real effect of the acquisition on competition would appear after the disposition of this case. Without attempting to forecast the future policy of Armour & Company in the conduct of its business, it is a sufficient answer to this suggestion to say that in the [fol. 1509] event that Armour & Company violates any of the provisions of the Packers and Stockyards Act there is ample power and authority in the Secretary of Agriculture under that Act to take appropriate and effective action.

After careful consideration of the entire record and the arguments of counsel, I find and conclude that the evidence is insufficient to sustain the charges made in the complaint, and therefore this proceeding is dismissed without prejudice, and it is so ordered.

W. M. Jardine, Secretary of Agriculture.

Sep. 14, 1925.

[fol. 1510] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE

ARMOUR AND COMPANY OF ILLINOIS, ARMOUR AND COMPANY OF DELAWARE, J. OGDEN ARMOUR, MORRIS AND COMPANY, Respondents

NOTICE AND COMPLAINT IN THE MATTER OF VIOLATIONS OF TITLE II OF THE PACKERS AND STOCKYARDS ACT, 1921

The Secretary of Agriculture, having reason to believe that the respondents herein have violated and are violating Title II of the Packers and Stockyards Act, 1921, and, it appearing that a proceeding under said Title II in respect thereto would be in the interest of the public, issues this complaint and notice stating the charges in that respect as follows:

1. That the respondent, Armour and Company of Illinois, is a corporation organized April 7, 1900, under the laws of the State of Illinois, and has an authorized capital

stock of $400,000,000, of which $100,000,000 is represented by preferred stock, and $300,000,000 by common stock. Of its total authorized stock there is now issued and outstanding $50,673,400 of preferred stock and $50,000,000 each of class A and class B of common stock, or a total of $150,673,400 of both common and preferred stock. In addition thereto, the said respondent, Armour and Company, has outstanding gold bonds, notes and debentures amounting approximately to $115,000,000. That said respondent has been for many years and is now engaged in the business of buying live stock in interstate commerce for the purposes of slaughter and of manufacturing or of preparing meats and meat food products for sale or shipment in interstate and foreign commerce, and is a packer as defined in Title II of said Packers and Stockyards Act. That said respondent owns and operates sixteen large packing plants located in various cities and states of the United States, the principal ones being located in middle western states; that it operates 332 branch houses located in the principal cities in various states for the distribution of its products. That said respondent purchases live stock at various points in the United States from producers and at its plants converts such live stock into the finished products, which it sells through its branch houses to dealers in meats and meat products in various states and in foreign countries. That said respondent, Armour and Company of Illinois, in volume of business is the second of the five largest meat packers in the United States engaged in the business of buying live stock and selling and distributing the products thereof in interstate and foreign commerce.

[fol. 1511] 2. Armour and Company of Delaware is a corporation organized under the laws of the State of Delaware in the latter part of 1922, and is authorized to issue $100,000,000 of 7 per cent guaranteed preferred stock, $60,000,000 of common stock, and $50,000,000 of first mortgage bonds; that said respondent has issued, or intends to issue at once, all of said mortgage bonds, all of said common stock, and $60,000,000 of said $100,000,000 preferred stock; and that said respondent was organized to acquire from Armour and Company of Illinois certain of its properties and assets. These properties and assets include the fully equipped packing houses of the Fowler Packing Company at Kansas City; the Hammond Packing Company at St.

Joseph, Missouri; the New York Butchers Dressed Meat Company at New York City; the Anglo-American Provision Company at Chicago; and also the Armour packing houses at Denver, Colorado, Fort Worth, Texas, Jacksonville, Florida, Indianapolis, Indiana, and Jersey City, New Jersey; the storage plant of the North American Provision Company at Chicago; the East St. Louis Cotton Oil Refinery at East St. Louis, Illinois, and various other auxiliary plants, including the soap works, glue works, sandpaper works, curled hair works and ammonia works; also the properties of the Armour Fertilizer Works and its subsidiaries, including twenty-one manufacturing plants and two large warehouses; the Compania Armour de Cuba, with its large distribution plant in Havana; the entire South American investments, including the modern packing houses at Sao Paulo and Santa Anna, Brazil, at La Plata and Santa Cruz in Argentina, and a half interest in La Blanca Company at Buenos Aires, with various other properties throughout the United States, and numerous enterprises closely affiliated with the packing and live stock industries. That all of the common stock of Armour and Company of Delaware is to be or has become the property of Armour and Company of Illinois, and about $110,000,000 of the proceeds arising from the sale of its bonds and preferred stock is to be or has been received by Armour and Company of Illinois and used by it for the retirement of certain of said company's outstanding obligations and for its other corporate purposes. That said respondent, Armour and Company of Delaware is a subsidiary of Armour and Company of Illinois, and was created for and is organized to engage in the business of buying live stock in interstate commerce for purposes of slaughter and of manufacturing and preparing meats and meat food products for sale and shipment in interstate and foreign commerce, and is a packer as defined in Title II of said Packers and Stockyards Act.

3. That the respondent, J. Ogden Armour, owns and controls a substantial part of the voting power and directs the business policies of the respondents, Armour and Company of Illinois and Armour and Company of Delaware, and is the chairman of the board of directors of each of said respondent corporations.

4. That the respondent, Morris and Company, is a corporation organized October 16, 1903, under the laws of the State of Maine and has an authorized and outstanding capital stock of $40,000,000, of which $30,000,000 is common stock and $10,000,000 is 7 per cent cumulative preferred stock. In addition, it has outstanding gold bonds and notes amounting approximately to $32,000,000. That said corporation has been for a long time and is now engaged in the business of buying live stock in interstate commerce for [fol. 1512] purposes of slaughter and of manufacturing and preparing meats and meat food products for sale and shipment in interstate and foreign commerce, and is a packer as defined in Title II of said Packers and Stockyards Act. That it owns and operates seven large packing houses located in various states of the United States, and 164 branch houses or distributing stations located in various states of the United States. Many of these packing plants and branch houses or distributing stations are located in cities and states where the respondents, Armour and Company of Illinois and Delaware, also have packing plants and branch houses. That said Morris and Company purchases live stock from producers at various points in many states in competition with Armour and Company and at its various plants converts such live stock into finished products and sells such products through its branch houses to dealers in meats and meat products in many states of the United States and in foreign countries in competition with Armour and Company. That Morris and Company in volume of business is the third of the five largest meat packers in the United States engaged in the business of buying live stock and selling and distributing the products thereof in interstate and foreign commerce.

5. That the respondents, Armour and Company and Morris and Company, separately operate slaughtering plants at the following large live stock markets: Chicago, Illinois; Kansas City, Missouri; National Stock Yards, Illinois; Omaha, Nebraska; South St. Joseph, Missouri; and New York, New York, at which markets from July 1, 1918, to June 30, 1922, were slaughtered 48.3 per cent of all animals slaughtered under Federal inspection in the United States. That for these years the combined slaughter of Armour and Company of Illinois and Morris and Company in said markets was 42.0 per cent of all cattle, 43.5 per cent

of all calves, 38.1 per cent of all sheep, and 41.0 per cent of all hogs, or 40.5 per cent of all animals, slaughtered under Federal inspection at these markets. That at National Stock Yards, Illinois, Armour and Company of Illinois and Morris and Company together slaughtered during said period 62.9 per cent of all the cattle slaughtered under Federal inspection at that market; and at South St. Joseph, Missouri, 56.5 per cent thereof; at Chicago 55.2 per cent of all the calves slaughtered under Federal inspection at said market; at National Stock Yards, 65.3 per cent thereof; at South St. Joseph, 61.6 per cent thereof; at National Stock Yards 67.3 per cent of all sheep slaughtered under Federal inspection at that market; at Kansas City, at National Stock Yards, Illinois, and at South St. Joseph they slaughtered for the same period, respectively, 52.6 per cent, 54.4 per cent, and 52.6 per cent of all of the hogs slaughtered under Federal inspection at those markets.

6. That since October 16, 1903, Armour and Company of Illinois and Morris and Company have separately, actively, and extensively engaged in the business of buying live stock at competitive points, slaughtering and converting the same into finished meat products and the by-products thereof, and have shipped to and sold at competitive points said meat products and by-products in many states of the United States and in foreign countries. That since said date said respondents have had the potential capacity to compete and naturally and normally should have competed one with the other, with respect to making daily the prices which are [fol. 1513] paid to producers for their live stock and the prices which are paid by dealers for meats and other live stock products; the quality of such products which were placed upon the market; and the character of the service rendered in the purchase, sale and distribution thereof.

7. That, at the time of its creation in 1900, Armour and Company of Illinois had outstanding capital stock in the amount of $20,000,000 and a surplus of approximately $13,000,000, and has since attained its present greatly enhanced size and dominating influence not solely by natural and normal business development, but largely by purchase and otherwise from individuals, firms and corporations of the ownership or control of many meat packing plants and other facilities connected with the slaughtering of live stock

or the distribution of meats and other live stock products, which plants and facilities were operated in competition with the said respondent, including the following:

In 1902 the Omaha Packing Company, the Hammond Packing Company, and the G. H. Hammond Company, all of which were merged into the National Packing Company, of which Armour and Company of Illinois owned or controlled 40 per cent of the capital stock; in 1904 the slaughtering plant of Thomas M. Lipton and Company of Chicago; in 1906 the Armstrong Packing Company, Dallas, Texas; in 1911 a practically controlling interest in the Pittsburgh Provision and Packing Company, Pittsburgh, Pennsylvania; in 1912 it acquired from the National Packing Company the Fowler Packing Company at Kansas City, the Detroit Beef Company, the German-American Provision Company at Chicago, Friedman Manufacturing Company at Chicago, the Colorado Packing and Provision Company, Denver, Colorado; Hammond Packing Company, South St. Joseph, Missouri; New York Butchers Dressed Meat Company, New York, and Ruddy Brothers, Kansas City; in 1915, Cortland Beef Company, Cortland, New York; in 1916, the Wabash Packing Company at Indianapolis, Indiana; in 1917, E. H. Stanton Packing Company, Spokane, Washington; and in 1918, Tifton Packing Company, Tifton, Georgia.

8. That on the 30th day of December, 1922, J. Ogden Armour, acting for himself and in behalf of either or both Armour and Company of Illinois and Armour and Company of Delaware, entered into a written contract or contracts with Morris and Company to acquire all of the assets of Morris and Company, including its business, patents and good will, together with all the interest of Morris and Company in the capital stock, business and properties of other companies engaged in the meat packing and related business as set forth in said contract or contracts and the schedule or schedules thereto annexed. That Morris and Company is to receive under the terms of said contract or contracts for its said assets approximately $10,000,000 in cash; $10,000,000 in preferred stock; and $10,000,000 in common stock of Armour and Company of Illinois or Armour and Company of Delaware; and said transfer is to be made subject to the liabilities and commitments which the purchaser

is to assume and pay as contemplated and provided in said contract or contracts. That transfer of said properties and business of Morris and Company is to be made on or before February 28, 1923. That by virtue of said contract or contracts, Morris and Company is to be entirely eliminated as a competitor of the other respondents in the buying of live [fol. 1514] stock in various states of the United States and in the sale and distribution of the products thereof in various states of the United States and in foreign countries. That said contract or contracts are by reference made a part hereof.

9. That the acquisition of said assets and business of Morris and Company by the respondents, J. Ogden Armour and Armour and Company of Illinois or Armour and Company of Delaware, on the one hand, and the acquisition of the stock of Armour and Company of Illinois or of Delaware by Morris and Company, on the other hand, as provided for in said contract or contracts, has the tendency or effect of restraining interstate commerce or of creating a monopoly in many sections and communities in various states of the United States in the purchase of live stock and in the shipment and sale of meat and other live stock products in many sections and communities in various states of the United States and in foreign countries.

10. That in the making of said contract or contracts or the carrying out thereof, the respondents, J. Ogden Armour and Armour and Company of Illinois or Armour and Company of Delaware are engaged in a course of business and have done an act for the purpose or with the effect of manipulating or controlling prices in the buying of live stock and the sale and distribution of the products thereof in interstate and foreign commerce and for the purpose or with the effect of restraining interstate and foreign commerce or of creating or tending to create a monopoly therein.

11. That by the acquisition by Armour and Company of Illinois or Armour and Company of Delaware of the assets and business of Morris and Company, including the stock or share capital or business of other corporations owned in whole or in part by Morris and Company, the names of which corporations are contained in said contract or con-

tracts and the schedule or schedules annexed thereto, and the acquisition by Morris and Company as set forth in this complaint of the stock or share capital of Armour and Company of Illinois or Delaware, the respondents have combined, arranged and agreed to eliminate entirely the respondent Morris and Company as a competitor of the other respondents and to materially increase the power of the other respondents to control and dominate the live stock and meat packing industry in the United States and foreign countries, thereby restraining interstate commerce in many sections and communities in the United States and foreign countries in the purchase of live stock and the sale of live stock products, or tending to create a monopoly in interstate and foreign commerce in the buying of live stock and the sale and distribution of the products thereof in the United States and foreign countries.

Therefore, notice is hereby given you and each of you, the said respondents, that the charges of this complaint will be heard by the Secretary of Agriculture, or his duly authorized representative, beginning at his office in the city of Washington, D. C., at ten o'clock A. M., the second day [fol. 1515] of April, 1923, or as soon thereafter as the parties may be heard, and continuing at the same or other places from time to time until said hearing is completed; in which hearing you and each of you will have the right to appear and show cause why an order should not be made by the Secretary of Agriculture, requiring you and each of you to cease and desist from violating Title II of the Packers and Stockyards Act, 1921, with respect to the transactions between or among the respondents as set forth in this complaint. You are further notified that on or before said date of hearing you and each of you may file an answer to this complaint.

In witness whereof the Secretary of Agriculture has caused this complaint to be issued and has signed the same and caused the official seal of the I partment of Agriculture to be affixed hereto in the District of Columbia, this 17th day of February, 1923.

Henry C. Wallace, Secretary of Agriculture.

[fol. 1516] PETITIONER'S EX. 158

Exhibit B

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 37623

UNITED STATES OF AMERICA, Petitioner,

v.

SWIFT AND COMPANY, ARMOUR AND COMPANY, MORRIS AND COMPANY, Wilson and Company, and Cudahy Packing Company, et al., Respondents

To the Honourable Justices of the Supreme Court of the District of Columbia:

The undersigned, George Sutherland and Henry W. Anderson, who were appointed trustees under the plan for deposit of the stock of the Swift and Armour interests in certain stockyards, as more fully set forth in said plan approved by decree entered in the above entitled cause on April 12, 1921, beg leave to submit the following report:

First. The provisions of said plan with respect to the appointment and duties of the individual trustees in so far as pertinent to the matters herein reported, are as follows:

[fol. 1517] "Upon the approval of this plan by the Court, these defendants wil execute and deliver to Henry W. Anderson, of Richmond, Virginia, and George Sutherland, of Salt Lake City, Utah, as trustees, powers of attorney, irrevocable during the time this plan remains in effect, authorizing said trustees jointly to vote all of the stock of said defendants in said last mentioned stockyard companies and stockyard terminal railroad companies, or such portion thereof as from time to time shall remain unsold pursuant to this plan.

"Said individual trustees shall be charged with the duty of acquainting themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, but shall not vote said stock so as to interfere with the management and conduct of said public stockyard mar-

ket companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the anti-trust laws of the United States, or the decree herein.

"In case said trustees shall disagree as to the voting of said stock, they, or either of them, or the petitioner, or the defendants, may apply to the Court for an order directing how said stock shall be voted, with the right of either party hereto to be heard and to except to the order of the Court and to appeal therefrom.

"It shall be the duty of said trustees to keep themselves informed as to the progress made in the sale of the stock in accordance with this plan and report the same to the Court as and when directed by it, or upon their own initiative, and with such recommendations and suggestions as they may deem proper."

Second. That in pursuance of the provisions of the said plan, the corporations and individuals constituting the Swift and Armour groups of the defendants during the latter part of April, 1921 and the early part of May, 1921, executed and delivered to your trustees powers of attorney to vote said stock in the respective stockyards mentioned and described in said plan, in the amounts therein stated, [fol. 1518] under here and pursuant to the terms and provisions thereof. Your trustees are advised that on May 12, 1921, the said corporations and individuals composing said Swift and Armour groups of defendants deposited with the Illinois Trust and Savings Bank as depository, certificates of stock duly endorsed in blank, representing their respective shares of stock in the various stockyards mentioned in said plan, or where such certificates of stock were pledged as collateral they deposited an order from the pledgees to exchange said certificates upon negotiable receipts from said depository, as provided in the plan. This deposit was made under escrow agreement, and copies of the said agreement and other papers in connection therewith were furnished to your trustees, and your trustees are advised the same were also filed in the record in the above entitled cause.

Third. The provisions of said plan for deposit of said stocks and vesting the voting power thereof in your trustees having thus been carried out by the defendants named, your trustees proceeded as rapidly as practicable to familiarize themselves with the conditions surrounding the discharge of the duties imposed upon them by the provisions of said plan quoted above. After due consideration and a study of such portions of the record in the above entitled cause as bore upon the performance of their duties as trustees under said plan, they determined that it would be wise for them to visit personally a number of the stockyards the stocks of which were deposited under said plan, and to familiarize by personal investigation of the condi-
[fol. 1519] tions surrounding said yards and the operations thereof, and to secure by interview with persons conducting business in said stockyards such information as would enable them to discharge intelligently the duties imposed. With this object in view, your trustees left Washington on the 22nd day of May, 1921, accompanied by Herman J. Galloway, Esquire, Special Assistant to the Attorney General representing the Department of Justice of the United States in this litigation. Arriving at Chicago on May 23, 1921, your trustees, together with Mr. Galloway, spent the days of May 23 and 24 in conference with the officers of Armour and Company and Swift and Company and other defendants constituting the Armour and Swift groups of defendants, with a view to familiarizing themselves as far as practicable with the general conditions and methods of operation prevailing at the various stockyards, the stocks of which were deposited as aforesaid.

As a result of these conferences, arrangements were perfected for your trustees, accompanied by Mr. Galloway and a competent stenographer, to visit the more important stockyards, inspect the same personally, and hold hearings at which it was proposed to secure information from various interests concerned as to the methods of operation prevailing at said yards, and the general conditions surrounding the same. Arrangements were also made to give notice at each of the points at which said stockyards proposed to be visited were located, of the proposed visit of
[fol. 1520] your trustees and the purposes thereof, by notices posted at the stockyards and published in the local press, and by such notices to invite all persons interested

in the stockyards, or doing business therein, or in any manner, interested in any question affecting the duties of your trustees under said plan, as well as the leading citizens of said districts to meet with your trustees at said stockyards and give them any information which would enable them intelligently to discharge the duties imposed upon them by said decree.

These arrangements having been perfected, your trustees, accompanied by Mr. Galloway as aforesaid, and by a representative of the defendants, arranged a schedule for a visit to the principal yards the stocks of which were deposited under said plan, so that they could spend at least one day at each of said yards. The yards visited and inspected, and the dates of said visits were as follows:

St. Paul Union Stockyards, St. Paul, Minn.....	Wed.	May 25, 1921
Sioux City Stockyards, Sioux City, Iowa.....	Thurs.	May 26, 1921
Union Stockyards Co. of Omaha, Ltd., Omaha, Nebraska	Fri.	May 27, 1921
Denver Union Stockyards, Denver, Colo.....	Sat.	May 28, 1921
Kansas City Stockyards, Kansas City, Mo.....	Mon.	May 30, 1921
St. Louis National Stockyards, East St. Louis Illinois.	Tues.	May 31, 1921

Having completed this itinerary and inspection of said yards and holding hearings at each as hereinafter stated, your trustees returned to Chicago from East St. Louis and spent Wednesday, June 1, 1921, in conference with the [fol. 1521] representatives of the Swift and Armour groups of defendants, at which the results of the inspections and hearings aforesaid were discussed and suggestions submitted based thereon, as well as certain suggestions with respect to the sale of the stocks of the Swift and Armour groups of defendants deposited under said plan.

Your trustees have not visited personally the remaining yards mentioned in said plan, as these yards are all comparatively small, and the amounts of stocks held by the Swift and Armour groups of defendants therein not large. Your trustees have, however, inquired into the methods of operation prevailing at the yards not visited, and have obtained written reports as to a number of said yards covering substantially the grounds covered by the hearings at the yards visited, and they are informed that the conditions and methods of operation prevailing at these smaller yards not visited or inspected, are substantially the same as those prevailing at the yards which your

trustees visited as aforesaid. Your trustees have not, therefore, deemed it necessary to make a personal visit to those yards.

Since the inspection of and the hearings at the yards mentioned, your trustees have endeavored to keep themselves informed in accordance with the provisions of said plan with the conditions and methods of operation at said yards, and all other matters affecting their duties under said plan. They have held conferences from time to time with the representatives of Swift and Armour groups of defendants, and by correspondence and otherwise have [fol. 1522] kept in touch with the situation, to the end that they might be in a position at any time to inform the court of any matters as to which it might desire information from them within the scope of their duties under said plan.

The general results of the investigations and conferences aforesaid will be summarized below under appropriate headings.

I

The Conduct and Operation of said Stockyard Companies and Stockyard Terminal Railroads

The stockyards visited and inspected by your trustees as aforesaid were all constructed and operated on the same general plan, subject to such minor changes in detail as were made necessary by physical and local conditions, and your trustees are advised that the same general conditions and methods of operation prevailed at those yards not actually visited. In general the stockyards consist of a series of pens of varying size, adapted to the requirements of the business, divided into sections by alleys or driveways, through which the cattle are driven to and from the pens, such alleys or driveways being equipped with suitable gates for cutting out and directing the movements of the cattle. The partitions and gates are constructed of wood or planking. A few of the pens in some of the yards are still unpaved, but the large majority of the pens as well as the driveways are paved with either brick or concrete, the [fol. 1523] present tendency being to provide concrete pavements which insure greater permanency and better sanitary conditions.

The yards are divided into sections for the accommodation of horses and mules, cattle, hogs and sheep in varying

proportions, to meet the requirements of the several markets. The cattle pens are generally single deck and uncovered, while the sheep and hog pens are generally of concrete, double deck construction, with incline planes for driving from one level to another. Where the horse and mule markets are large as in Kansas City and East St. Louis, proper stable facilities with auction houses are provided. All of the yards are provided with facilities for feed distribution, generally by overhead galleries, with running water in the pens. The unloading railroad tracks are located at one side of the yard and connected therewith by unloading platforms and chutes of wood or concrete, through which the animals are driven from the cars into unloading pens, and thus distributed throughout the yard. Wood or concrete runways extend from the yards to the various adjoining packing plants and reloading facilities are provided for the reshipment of cattle not slaughtered at the local plants. The modern tendency in all yards is toward reinforced concrete construction.

Adjoining the stockyards in each instance is an administration building owned by the company. In this building are located the operating offices of the stockyard and terminal railroad companies, and facilities are provided for the accommodation of shippers, dealers and others doing business in the yards. In addition to the offices and services of the stockyard company, offices are provided and rented in the adminstration building to a stockyard bank, and a newspaper, as well as commission men, traders and speculators doing business on the yards. In connection with some of the larger yards an hotel is provided for stock raisers and others who visit the yard on business. The hotel building is owned by the stockyard company, but is operated under lease entirely separate from the stockyards themselves.

[fol. 1524]

The handling of cattle upon and through said yards is conducted substantially as follows:

By arrangement with the various railroad companies, telegraphic notice is given in advance of cattle in transit to the yards, and these notices are posted upon a bulletin board in the administration building, showing the commission men or others to whom said cattle are consigned and the probable time of arrival. On arrival of these cattle trains at point of destination, the cars are delivered to the

terminal railroad company which maintains a connection with the various railway lines and operates the tracks into the yards. The cars are then moved by the terminal railroad to the unloading chutes and the cattle are unloaded by the stockyard company into unloading pens and driven into the alleyways or driveways where they are delivered to the [fol. 1525] commission men or others to whom they are consigned, and taken to the pens of such commission men or consignee. The commission men then get in touch with the various buyers operating upon the yard and offer these cattle to the buyers, the price being negotiated with the various buyers. The purchaser may be a representative of the packing house operating plants near the yards, an order buyer buying on order from other and distant plants, a trader purchasing for the purpose of stocking and feeding cattle in the territory contiguous to the yards, or a speculator who buys on the yards, feeds the cattle, sorts them and then resells them either to stockers or traders or packers at the best price obtainable. The cattle are fed and watered immediately upon their arrival, and any crippled animals are cut out and taken to special pens where they are treated.

When a sale has been effected, the cattle are driven to the scale houses and weighed and delivered to the purchaser upon passing from the scales after weighing. They are then driven to the packing houses if purchased by packers, or to the pens of the stocker, feeder or speculator, or, if intended for reshipment, to the reloading pens.

In some states the yards are under control of state public utility commission, as in Minnesota and Missouri. In such cases the handling of the cattle and the feeding and weighing is supervised by representatives of such commission. [fol. 1526] The cattle are inspected by representatives of the United States Government on their arrival in order to eliminate diseased cattle or others unfit for the markets. Further details as to the various matters involved in the conduct of the yards and the management thereof will be given below with reference to the testimony in the record of the hearings held by your trustees bearing specifically thereon.

For full and detailed information as to the organization, conduct and operation of said stockyards, the court is referred to the following testimony and exhibits filed as a part thereof:

St. Paul Yards

T. E. Goode ..... Record pps. 2 to 13
R. J. Wells ..... " " 14 to 36

Sioux City Yards

R. L. Eaton ..... Record pps. 108 to 149

Omaha Yards

E. Buckingham ..... Record pps. 205 to 233

Denver Yards

J. A. Shoemaker ..... Record pps. 301 to 337

St. Joseph Yards

J. O. Barkley ..... Record pps. 399 to 424

Kansas City Yards

George R. Collett ..... Record pps. 425 to 428

East St. Louis Yards

E. F. Bisbee ..... Record pps. 430 to 464

[fol. 1527] The following subjects of special inquiry may be specifically mentioned for the information of the court:

(1) Terminal Railroads

Terminal railroads exist in connection with the stockyards at all yards visited by your trustees and, as your trustees are advised, at other yards not so visited. These terminal railroads are owned and operated by a corporation which is separate from the stockyard company, but the stock of which is owned by the stockyards company. In some instances the terminal railroad companies own their own locomotives and equipment for moving trains, while in other instances they own no equipment, but simply own the tracks and railroad facilities upon which the trains are moved with the equipment of the railroads connecting therewith.

The terminal railroads are connected with the main transportation lines reaching the point at which the stockyards are located and upon which stock is hauled to and from the yards. The railroad companies deliver the shipments in cars to the terminal railroad, which in turn moves these shipments to the unloading yards and receives cars from the connecting railroads and places them at the reloading pens for the handling of such cattle as may be reshipped. These railroads also handle cattle which may be unloaded fed and watered at the yards while in transit from and to other points.

[fol. 1528] These terminal railroads are under the supervision of the Interstate Commerce Commission and of the state public utility commissions within the limits of their jurisdiction. Their rates are on file with the Interstate Commerce Commission. The details as to the ownership and operation of these terminal railroads are given in the evidence of the various managers of the yards cited above and the exhibits filed therewith. The Court is referred especially to the following pages of Volume I of the Record as bearing upon this subject: Pps. 6, 7, 130, 212, 307, 414 and 446.

(2) Assignment of Space in the Yards

Your trustees made special inquiry into the methods followed in assigning pens or space to the various commission men, traders and speculators who operated in the yards. This inquiry was especially directed to the question as to whether there was any discrimination in this regard. It appears that no charge is made by the stockyards company for the use of the pens by the commission men, traders and speculators. The pens are assigned to the various commission men in one section of the yard, to traders in another section and to speculators in another section, the object being to arrange these assignments in such way as best to promote the convenience and expeditious handling of the cattle in the yards, and to avoid movements in different directions. The amount of space assigned to each of the commission men, traders and specu-

[fol. 1529] lators is based generally upon the amount of business done the preceding year. These assignments of space are readjusted from time to time to meet the changes in the development of the business of the various commis-

sion men, traders and speculators. If a new buyer enters the yard he is given the best available space, the amount thereof being based upon his probable business, and thereafter adjusted in accordance with experience. While each of the commission men, traders, and speculators naturally desire to secure the best location possible in the yard, we found no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justice to all concerned.

For detailed evidence on this subject, the court is referred to the following pages of Vol. I of the Record: Pps. 10, 138, 225, 231.

(3) Weighing

As stated above, after a sale of cattle is effected, they are driven on to the scales and weighed. These scales are constantly checked and tested in order to maintain their accuracy, and weighing tickets are furnished to the commission men, the purchaser, and a record is kept by the company. In some instances, as in St. Paul the weighing is under the supervision of the state utilities commission. Your trustees were unable to find any ground for com- [fol. 1530] plaint as to the conduct of the weighing operation, and there was no suggestion that it was not fairly and justly done. For details as to weighing, the court is referred to the testimony of the managers of the yards cited above, and specifically to the following pages of the evidence: Pps. 12, 14, 16, 34.

(4) Charges and Revenues

The revenues of the stockyards are derived from three sources—(a) a charge of $1.00 per car for unloading cattle, which is paid by the transportation companies and absorbed in the rate; (b) the sale of feed for the cattle while in the yards; and (c) a yardage charge upon all cattle handled upon the yards.

The first charge is fixed by agreement with the transportation companies. The yardage charge is fixed by the stockyard companies except where the yard is subject to the jurisdiction of the public utility commission of the

state, as in St. Paul, when such charges are under the control of such commissions. The charge is substantially the same in all yards, since any material variation would lead to a discrimination against the yards having higher charges.

The feed charges will be discussed below. They are regulated by the prevailing market prices for hay, corn and other feed. In the St. Paul yards the public utility commission of Minnesota has undertaken to fix the price for [fol. 1531] feed to be charged by the yards, and the matter is still in litigation.

Your trustees found no objection to or criticism of the stockyard charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, trades and speculators, it is necessary in order to provide adequate revenue that the stockyard companies should charge a profit upon the feed used for cattle while in the yards, and this charge, as well as the yardage charge, is of course charged back against the producer or shipper of the cattle. Since the farmers who are also stock raisers produce and sell the feed, the difference in the price realized by them for their feed on the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. This might possibly be relieved to some extent by making a rental charge for the pens and reducing to a corresponding degree the profit on feed, but the result to the shipper of cattle would be the same, and this would necessarily involve a complete readjustment of present charges which have grown up as a result of experience, and with which the public are familiar. With the exception of some complaints as to the feed charges, and in a few instances as to the character of the feed furnished, which latter complaints the witnesses testified were always adjusted by the stockyards companies upon proper showing, your trustees found no serious objections as to the present [fol. 1532] charges of the stockyards companies. Since the enactment of Congress of the "Packers and Stockyards Control Act of 1921" these matters of detail administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just ground be shown therefor. For details of the evi-

dence on this subject, the court is referred to the following pages of the record: Pps. 11, 12, 16, 21, 55, 60, 86, 133, 159, 191, 221, 264, 367, 384, 468, 486, 492.

(4) Rendering Plants

At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other commercial products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this court. The evidence showed that in no instance was the rendering plant controlled by the stockyard company, and in fact your trustee found no instance in which the stockyard company had any interest in the company operating the rendering plant. Your trustee found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this busi- [fol. 1533] ness and to give to the stockyard company some responsible agency to which it could look for the prompt removal of dead animals, which was essential to the sanitary condition of the yards. The reasons given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stockyard companies and the rendering plants which they deemed a violation of the Anti-Trust Laws of the United States, or of the decree of this court.

For the details of the evidence on this subject, the court is referred to the following pages of the record: Pps. 134, 136, 223, 332, 423, 460.

(5) Stockyard Bank

There is maintained and operated at the administration or exchange building at each of the stockyards visited, and as your trustees are advised at the other company yards also, a stockyard bank. This institution leases its quarters in the administration building from the stockyards company, but in no instance did the testimony show that the

stockyards company was in any wise interested in the stock of the bank, or had any control over the operation thereof. This bank is conducted by a separate corporation in each case for the convenience of stock raisers, commission men, traders and others doing business upon the yards, and for making loans upon cattle. Your trustees could find noth- [fol. 1534] ing in the relation between these banks and the stockyard companies in violation of the Anti-Trust Laws of the United States or of the decree in this cause. The officers of these banks testified in a number of instances before your trustees at the hearings. The court is referred for further details to the testimony pps. 137 and 229, as well as to the evidence of the managers of the stockyards above cited.

(6) Stockyard Newspapers

At each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulating generally in the territory served by these yards. This newspaper in each instance is conducted in the administration or exchange building owned by the stockyards company, leasing its offices and quarters therein from the stockyard companies. While it appeared that in some instances in the past the stockyards company had been interested in the newspaper, the testimony was that such interest where it had existed had now been disposed of, and these newspapers are now owned by individuals or separate companies not connected with the stockyards companies in any way, and the stockyards companies have no interest therein. The testimony was that the stockyard companies did not in any way control or influence the policy or operation of these papers. In a number of instances the owners or managers of these papers testified at the hearings. For further information [fol. 1535] on the subject, the court is referred to the following pages of the record: Pps. 137, 151, 230, 285, 335, 496.

(7) The Packing Plants

Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some

instances these packing plants are located upon land owned by the stockyards company. . These packing houses constitute the principal buyers for cattle upon the local yards.

While the larger packing companies maintain packing houses at nearly all of these yards, and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyard companies against such independent plants, either in leasing land upon which to locate said plants, or in any other manner. The testimony both of the officers of the stockyard companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed, and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards, with a view to the [fol. 1536] development of their markets and resulting increase in their business. For further details on this subject, the court is referred to the testimony in the record at the following pages: Pps. 261, 271, 282, 298, 313, 309, 395.

(8) Ownership of Stock by Large Packers and Effect on Competition Among Buyers on the Yards

Your trustees directed an inquiry at each place to the question of the effect if any of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market, and especially upon competition between buyers upon the yards, with a view to carrying out the instruction of the decree, to ascertain if there was in the management of the stockyard companies any violation of the Anti-Trust Laws of the United States, or of the decree of this court.

The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers and other persons examined by your trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards, or the price of cattle sold therein; that the sole function of the stockyards was to provide a market place for the cattle, and to take care of them while they were on

the market until they were delivered to the purchaser, that the buyers, consisting of the representatives of packing houses, independent traders and speculators were in no way under the control of the stockyard companies, except [fol. 1537] that they were all required to conform to the police regulations for the conduct of the yards, and to conduct their business in accordance with the proper standards of business ethics or integrity. In some instances the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers, because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competition in buying upon the yards, not only as between buyers for the packers, but between buyers for the packers and traders and speculators, and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyards companies had no bearing upon the question of competition between the buyers, and did not result in any discrimination by the companies in favour of the packers. There were witnesses who expressed the opinion that it was contrary to the interests of the cattle trade, and especially the cattle growers to have the stockyards controlled by the packers, their view being that they should either be controlled by the government or independent owners, but the large preponderance of the evidence was to the effect that the control of the stockyards by the large packers who were interested in maintaining a good market place which would attract shipments to these markets, and who were also interested in the efficient management of the yards and the proper handling [fol. 1538] of the cattle which they were to purchase and slaughter, was in the interest of the market and of the cattle trade generally. The view of those opposed to the ownership of stock by the packers will be found set forth in the testimony of E. L. Burke, p. 253, A. E. DeRichols, p. 373 and T. W. Tomlinson, p. 385, while the views of those of the opposite opinion will be found scattered throughout the evidence referred to below.

The evidence of those opposed to the ownership of stock in the stockyards by the packers as a matter of policy

failed, however, to disclose any facts showing that the ownership of such stock was used to give to the packers any advantage as buyers upon said yards, and the overwhelming evidence of all classes of witnesses who appeared before your trustees was to the contrary.

For details of this subject, with the views of the various witnesses who testified with relation thereto, the court is referred to the following pages of the testimony: Pps. 22, 26, 42, 58, 69, 92, 94, 140, 144, 148, 154, 161, 165, 167, 185, 200, 202, 239, 240, 244, 248, 255, 268, 269, 279, 287, 296, 342, 347, 348, 351, 353, 360, 367, 374, 386, 388, 391, 458, 472, 475, 490, 499, 502.

(9) The Management of the Yards

The provisions of the plan under which your trustees were appointed requiring them so to vote the stock of the [fol. 1539] Swift and Armour groups of defendants in the yards mentioned in said plan as not "to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroad, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the anti-trust laws of the United States, or the decree herein."

Your trustees directed their inquiries especially to the management of the yards, with a view to ascertaining if there was any violation of the Anti-Trust Laws of the United States or of said decree which would require them to vote the stock for change of management.

Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their views as to the policy of the ownership of stock in the yards by the packers, that the present management of the yards visited was excellent, and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed, and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted had been remedied when brought to

the attention of the stockyards company. Even those persons who were strongly opposed on principle to the owner-[fol. 1540] ship of stock in the stockyards companies by the packers, admitted that the management was good, and could suggest no improvement therein. After most careful investigation, your trustees were unable to discover anything in the present management of these yards which was in violation of the anti-trust laws of the United States, or of the decree of this court in this cause. For the testimony, on this subject, the court is referred to the following pages of the Record: Pps. 35, 38, 48, 54, 64, 77, 82, 87, 90, 95, 177, 152, 161, 164, 170, 187, 191, 195, 242, 254, 259, 263, 271, 277, 281, 286, 294, 341, 346, 358, 359, 364, 366, 369, 375, 380, 383, 389, 396, 419, 459, 467, 475, 482, 485, 492, 494, 498, 502.

[fol. 1541] Conclusion

Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said stockyards and stockyard terminal railroads are not now being used in violation of the Anti-Trust Laws of the United States, or of the decree of this court entered in this cause.

II

As to the Sale of the Stock Held by the Swift & Armour Groups of Defendants in said Stockyard Companies in Accordance with said Plan

In the conferences held by your trustees with the representatives of the Swift and Armour groups of defendants in Chicago before and after the inspection of said yards as aforesaid, plans for the sale of the stock held by the Swift and Armour groups of defendants in pursuance of the plan approved by this court were discussed, and suggestions from your trustees were requested. Your trustees did not feel that they were charged with the obligation

either to sell or to suggest methods for the sale of the stock [fol. 1542] of said groups of defendants, but merely to keep themselves informed as to the progress made to that end. They did, however, submit certain suggestions as to the sale of said stocks, and especially suggested that the same be advertised for public sale, which was subsequently followed by the said Swift and Armour groups of defendants.

On the occasion of the visits of your trustees to the various stockyards as indicated above, they undertook to ascertain from bankers, representatives of the agricultural interests, traders upon said stockyards and others who might be informed on the subject, whether it would be practicable to make a sale of the stock of the several yards either to the business or financial interests or to stock raisers or others in the communities served by said yards respectively. With one exception hereinafter mentioned, the testimony of those who appeared before your trustees was generally to the effect that a sale of said stock to any of the interests mentioned, or in the communities served by said stockyards at any reasonable price under prevailing conditions would be impracticable. At the hearing at Denver, Mr. A. E. De Richols, representing the American Live Stock and Loan Company stated that this Company would buy the Denver stockyards at a fair price, and he was assured that if he could get together a syndicate of people who would buy the stock, there would be no difficulty in getting it (See Record p. 379). So far as your trustees are [fol. 1543] advised, no further steps have been taken by him or his company in this connection.

Your trustees are informed that about the month of May 1921, negotiations were opened up by Channing M. Ward, Esquire, of Richmond, Virginia, with the representatives of the Swift and Armour groups of defendants, looking to the purchase of the stock held by them in the various yards mentioned in the plan. These negotiations were continued for some months by correspondence and conference with the representatives of these groups of defendants. Mr. Ward succeeded in interesting certain large banking interests in New York in the undertaking, but after careful investigation, they advised that they would be unable to handle the matter at the present time. These negotiations

were therefore discontinued. No definite offer was made for these stocks or any part thereof.

The Swift and Armour groups of defendants having been unable to secure any definite offers of purchase of these stocks or any substantial part thereof by private negotiation, adopted the suggestion of your trustees that they should advertise the same for public offering. Your trustees are advised that the following advertisement was prepared and inserted in the various newspapers hereinafter named:

[fol. 1544] "Public Offering of Interests in Stock Yard Companies

Under the Plan for the disposition of stock yards interests, filed with and approved by The Supreme Court of the District of Columbia, the shares of stock owned by Armour and Swift groups in Public Stock Yards Market Companies are offered for sale, subject to such terms and conditions as may be agreed upon between the owners and the purchasers; and subject to the approval of The Supreme Court of the District of Columbia.

The stock is offered subject to prior sale and to the right of the owners to reject in whole or in part any or all bids.

Bids will be received up to April 1, 1922, by The Illinois Trust and Savings Bank, of Chicago, for such shares of stock as are owned by these groups in Public Stock Yards Market Companies. The stock ownership of such groups in Public Stock Yards Market Companies includes also the stock ownership in Stockyard Terminal Railways serving the respective stock yards.

Illinois Trust and Savings Bank, Chicago."

Your trustees are informed that this advertisement was inserted in the following newspapers on the dates named below, in the year 1922:

Place	Name of paper	Dates of issue (1922)
Boston	Boston News Bureau	Feb. 7, 14, 21
	Boston Financial News	"
	Boston Commercial	"
New York	Wall St. Journal	"
	Commercial & Financial Chronicle	"
Washington	Washington Times	"
	Washington Star	"
	Washington Herald	"
	Washington Post	"
[fol. 1545] Chicago	Drovers Journal	Feb. 7, 14, 21
	Journal of Commerce	"
South Omaha	Drovers Journal Stockman	"
South St. Paul	So. St. Paul Reporter	"
East St. Louis	National Live Stock Reporter	"
Denver	Record Stockman	"
South St. Joseph	Stock Yards Journal	"
Fort Worth	Live Stock Reporter	"
Sioux City	Live Stock Record	"
Kansas City	Drovers Telegram	"
Des Moines	Wallance's Farmer	Feb. 7 and 14
	Iowa Homestead	" 16 " 23
St. Paul	St. Paul Farmer	" 18 " 25
Topeka	Farmers Mail & Breeze	" 18 " 25
Chicago	Prairie Farmer	" 18 " 25
	Breeders Gazette	" 16 " 23
	Orange Judd Farmer	" 15 " Mar. 1
Fort Worth	The Cattleman	Feb. 18
Denver	The Producer	" 18

Your trustees are advised that no bids were received by the Illinois Trust and Savings Bank for any substantial amounts of the stocks of the Swift and Armour groups of defendants in the various yards mentioned in said plan in response to said advertisements, and that the effort to sell the same by public offering as stated in said advertisement has not been successful. A report from said depository showing the results of said offering is returned as an exhibit with this report.

For information as to the views and opinions of the banking and cattle interests in the territory served by the va- [fol. 1546] rious yards visited by your trustees as to the feasibility of making sale of said stocks at the present time, the court is referred to the testimony of these witnesses at the following pages of the record: Pps. 44, 48, 51, 53, 64, 66, 74, 80, 89, 98, 163, 188, 192, 196, 198, 235, 246, 249, 256, 273, 297, 338, 349, 361, 362, 371, 378, 420, 462, 471, 476, 479, 488, 500, 505.

Conclusion

Your trustees therefore report that they have kept themselves informed as to the progress made in the effort to sell the stock covered by said plan, in accordance therewith; that they are of opinion that the Swift and Armour groups of defendants have made reasonable and sincere efforts to sell said stock, and that up to the date of this report their efforts in this regard have been unsuccessful.

III

Voting the Stock under the Plan

The plan provides that the trustees shall not "vote said stock so as to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or [fol. 1547] some of them, are being used in violation of the anti-trust laws of the United States, or the decree herein".

As largely stated, your trustees directed their investigations largely to the question of whether the stockyards or stockyard terminal railroads, or any of them, were being used in violation of the Anti-Trust Laws of the United States, or of the decree of this court in this cause, to the end that they might exercise the voting power vested in them of the stocks of the Swift and Armour groups of defendants in pursuance of the terms of said decree. Your trustees have not been able to find or to obtain any testimony to the effect that the stockyards or stockyard terminal railroads are being used in violation of the Anti-Trust Laws of the United States or of said decree, and have therefore, under the terms of the said plan, exercised said voting power for the continuance of the management as it existed when said plan was approved by this court.

Your trustees have only been called upon to vote said stock at the annual meetings of said corporations for the election of directors and the conduct of such other business as usually comes before meetings of that character in the ordinary course. In view of the fact that there was nothing to require or justify your trustees in voting the stock for any change in management under the terms of said plan

your trustees did not feel that they were called upon to incur the expense necessary to attend these formal meetings in person. They therefore executed proxies to designated [fol. 1548] persons to vote said stock at the annual meetings of said stockyard companies, which have been held in accordance with the by-laws, for the election of boards of directors of said companies as they existed at the date of the adoption of said plan, except in such cases as those who controlled the companies desired to substitute other directors, but few of which substitutions were made, and in no case has there been sufficient change in the board of any of such corporations to change the management in any respect.

In giving these proxies your trustees were careful to do so only upon condition that the stock, the voting power of which was vested in them, should not be voted to ratify any previous acts of these companies, or any of them, but simply to elect the necessary board of directors and to perform those formal acts usually incident to annual meetings.

IV

Exhibits Returned

Your trustees return herewith as a part of this report, the following exhibits:

Exhibit 1. Volume I of the testimony taken at the hearings by your trustees at the various stockyards as indicated above.

Exhibit 2. Volume II of the testimony taken at said hearings, consisting of exhibits filed with the evidence of various witnesses as indicated therein.

[fol. 1549] Exhibit 3. Written reports upon the Fort Worth stockyards and Fort Worth Belt Railway, which were filed with the trustees at their request.

Exhibit 4. Report of depositary, the Illinois Trust and Savings Bank, Chicago, of the stock of the Swift and Armour groups of defendants under said plan, showing the results of the public offering of said stocks by said depositary.

Your trustees hold themselves in readiness to furnish to the court any additional information on any point on which

the court may desire the same within the scope of their duties under the said plan, and to submit to the court upon its request any recommendations or suggestions which may be desired pertaining to the matters within the scope of their duties as prescribed by said plan.

Respectfully submitted.

(Sgd.) George Sutherland, (Sgd.) Henry W. Anderson, Trustees.

April 8, 1922.

[fol. 1550] PET. EX. 159

EXHIBIT C

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 37623

UNITED STATES OF AMERICA, Petitioner,

v.

SWIFT AND COMPANY, ARMOUR AND COMPANY, MORRIS AND COMPANY, Wilson and Company, and Cudahy Packing Company et al., Respondents

To the Honourable Justices of the Supreme Court of the District of Columbia:

The undersigned, Henry W. Anderson, being the sole trustee since the resignation of the Honourable George Sutherland as hereinafter stated, under the plan for deposit of the stock of the Swift and Armour interests in certain stockyards, as more fully set forth in said plan approved by decree entered in the above entitled cause on April 12, 1921, begs leave to submit the following report.

First. The provisions of said plan with respect to the appointment and duties of the individual trustees in so far as pertinent to the matters herein reported, are as follows:

"Upon the approval of this plan by the Court, these defendants will execute and deliver to Henry W. Anderson, of Richmond, Virginia, and George Sutherland, of Salt Lake City, Utah, as trustees, powers of attorney, irrevocable

during the time this plan remains in effect, authorizing said [fol. 1551] trustees jointly to vote all of the stock of said defendants in said last mentioned stockyard companies and stockyard terminal railroad companies, or such portion thereof as from time to time shall remain unsold pursuant to this plan.

"Said individual trustee shall be charged with the duty of acquainting themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, but shall not vote said stock so as to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the anti-trust laws of the United States, or the decree herein.

"In case said trustees shall disagree as to the voting of said stock, they, or either of them, or the petitioner, or the defendants, may apply to the Court for an order directing how said stock shall be voted, with the right of either party hereto to be heard and to except to the order of the Court and to appeal therefrom.

"It shall be the duty of said trustees to keep themselves informed as to the progress made in the sale of the stock in accordance with this plan and report the same to the Court as and when directed by it, or upon their own initiative, and with such recommendations and suggestions as they may deem proper."

Your trustee begs leave to refer to the report by the trustees under said plan dated April 8, 1922, and duly filed in this cause, together with exhibits with said report, for full statement of the action of the trustees during the first year in which said plan was in operation.

Second. In said plan it is provided that

"If any vacancy in said trusteeship occurs, because of the removal or otherwise of said Henry W. Anderson the [fol. 1552] court shall appoint as his successor a suitable person upon the nomination of the petitioner; and if such vacancy shall occur because of the removal or otherwise of said George Sutherland, the Court shall appoint as his

successor a suitable person upon the nomination of the Armour and Swift groups of defendants."

The Honourable George Sutherland, having been appointed to and having accepted the position of Associate Justice of the Supreme Court of the United States, filed his resignation as trustee under said plan on the — day of ——, 1922, and thereupon a vacancy occurred in the position filled by him. Your trustee is advised that by agreement between the Swift and Armour groups of defendants and the petitioner, the United States, no nomination was made to the court to appoint a successor to fill said vacancy as in said plan provided; but the undersigned, the remaining trustee appointed under said plan, was requested to act as sole trustee thereunder by the Swift and Armour groups of defendants, who had the right to nominate the successor for the vacancy thereby created, and with the consent of the petitioner and at the request of the Swift and Armour groups of defendants, your trustee has since been acting as sole trustee under said plan and discharging the duties therein and thereby vested in and conferred upon said trustees. Among other things, the undersigned as sole trustee has voted the stock of the Swift and Armour groups of defendants deposited under said plan at meetings of the stockholders of the respective stockyard companies held since the resignation of the Honourable George Sutherland as aforesaid or has executed proxies [fol. 1553] for the voting of the same. In view of the fact that the original powers of attorney executed to the trustees by said groups of defendants ran to the Honourable George Sutherland and the undersigned as trustee jointly, your trustee has requested the Swift and Armour groups of defendants to execute and file with the respective corporations new powers of attorney under said plan, running to the undersigned trustee solely, with power of substitution in the same form as said original powers of attorney, to the end that there might be no question of the validity of the action of the undersigned acting as sole trustee in voting said stock at said meetings, and this action has been taken by said groups of defendants. Your trustee would, however, respectfully request that this Honourable Court enter a decree ratifying and approving the action of the undersigned as sole trustee, including the voting of said

stock since the resignation of the Honourable George Sutherland as aforesaid, and up to the date of this report.

Third. During the current year, and since the filing of the report of April 8, 1922, certain of said stockyard companies in which stock is held by the Swift and Armour groups of defendants or some of them and voted under said plan have increased their capitalization by the issue of additional stock, either in the form of stock dividends or otherwise. Among the exhibits attached to this report and [fol. 1554] prayed to be read as a part hereof will be found statements showing any changes in the capitalization of the various companies in which the stock is voted under said plan. All stock issued to the Swift and Armour groups of defendants in such increase of capitalization in the form of stock dividends or otherwise has been duly deposited with the Illinois Trust and Savings Bank as depository under said plan, and powers of attorney have been executed to the trustees or to the undersigned as sole trustee to vote same under said plan, and your trustee has been duly advised of such deposit.

Fourth. As will appear from the record in this cause during the past year, the stock of the Swift and Armour groups of defendants in the Jersey City Stockyards Company has been deposited under said plan, and proxies or powers of attorney running to the trustee to vote said stock have been duly deposited with said company and copies thereof furnished your trustee. Your trustee has since voted said stock at meetings of stockholders of said corporations in pursuance of said plan.

Fifth. Your trustee is further advised that since the last report a certificate for 7,900 shares of the common capital stock of the Union Stockyards Company of Omaha, Ltd., held under pledge at the time the plan of April 12, 1921 became effective, has been released from said pledge and surrendered to the Illinois Trust and Savings Bank, depository, and power of attorney or proxy authorizing your [fol. 1555] trustee to vote the same has been issued covering such additional shares so deposited. While the stock of the Chicago Stockyards Company was not deposited under said plan, and your trustee was not authorized to vote the same, yet he is advised that the Armour group have disposed of all stock held by them in said Chicago

Stockyards Company, in pursuance of the plan filed with the court on February 24, 1921. This information is given as bearing upon the general question of the disposition of said stock.

As already stated, the court will find a detailed statement of changes in capitalization and personnel of the various corporations mentioned filed as a part of the exhibits with this report, and further detailed reference thereto is deemed unnecessary.

Sixth. Under the provisions of said plan quoted above, your trustee was charged with the duty of acquainting himself with the conduct and operation of said stockyard companies and of stockyard terminal railroads, and was further required to vote said stock so as not to interfere with the management and conduct of said companies, unless he should be of opinion that said stockyards or railroads, or some of them, are being used in violation of the anti-trust laws of the United States, or the decree in this cause.

In pursuance of said instructions, your trustee has endeavored to keep informed to the best of his ability as to the conduct of the business and affairs of said stockyard [fol. 1556] companies and stockyard terminal railroads during the past year, and has voted the stock of said stockyard companies deposited under said plan for the continuance of the existing management, with such changes in personnel as might be requested by the owners and depositors of said stock, since he has found nothing in said management which in his opinion was in violation of the anti-trust laws of the United States, or the decrees of the court in this cause.

Seventh. In order to enable your trustee to carry out his duties under said plan, he arranged during the month of February, 1923, to visit a number of said stockyards, accompanied by Herman J. Galloway, Esquire, counsel for the United States in this cause, and a representative of the Armour and Swift groups of defendants, in order to make a personal inspection of said yards, and to take evidence of any persons desiring to testify with relation to the management of the said stockyards. Pursuant to this plan, your trustee visited the Jersey City Stockyards on the 15th day of February, 1923, accompanied by Mr. Galloway, and made a careful inspection thereof, and took the testimony

of Mr. R. C. Bonham, Manager of said stockyards, and a number of dealers, commission men and others carrying on business on said yards, with a view to informing himself as to the conduct thereof under the provisions of said plan. A copy of the evidence so taken and exhibits therewith showing the conditions of the stockyards and the judg-
[fol. 1557] ment of persons familiar with same as to the management thereof as filed with this report as a part hereof.

Eighth. From the Jersey City Stockyards your trustee went to the stockyards at East St. Louis on February 17, 1923, made an inspection and took the evidence of the manager and various witnesses as to the conditions existing in said yards with special reference to the instructions contained in said decree. From St. Louis your trustee went to Fort Worth, Texas, which had not been formerly inspected by Honourable George Sutherland and the undersigned during 1922, and made a careful investigation of the conditions existing at that point. From Fort Worth your trustee went to Kansas City and inspected the yards at that point, and also went over carefully the situation at St. Joseph, Missouri, with the manager of the St. Joseph yards. Thence your trustee went to Omaha and after careful inspection took the evidence of numerous persons, including the manager of said yards, traders, stock-dealers, commission men, stock-growers and others as to the conditions prevailing at that point, and also made inquiries as to the conditions prevailing at Sioux City. Your trustee was unable to visit the yards at St. Paul and Denver, but obtained from the management of said yards full reports as to the conditions prevailing thereof as affecting the management thereof. The evidence taken at the various points indi-
[fol. 1558] cated, together with reports on the yards at St. Paul and Denver are all returned herewith for the information of the court and made a part of this report.

The yards at St. Paul, Sioux City, Omaha, St. Joseph, St. Louis and Denver had been carefully investigated by the trustees under said plan in May, 1921, and the record of the hearings at that time will be found as a part of the report of the trustees filed herein on April 8, 1922, as aforesaid. Your trustee did not deem it necessary to visit the smaller stockyards in which the interests of the Swift and

Armour groups of defendants is very small, as the conditions prevailing in those yards were illustrated by those prevailing at the yards visited, and no definite complaints have been received as to conditions at these smaller yards.

The general results of the investigations so made may be briefly summarized as follows:

I

Conduct and Operation of the Stockyards and Stockyard Terminal Railroads

In connection with this point, your trustee would refer to the report filed April 8, 1922, where the details of this subject are discussed. On the recent visit to said yards, your trustee did not find that there had been any material change in the methods of operation and management as set forth from pages 7 to 25 inclusive of said report of April 8, 1922. The general testimony of the witnesses, which evidence was [fol. 1559] taken and is returned herewith as aforesaid was to the effect that the management of the yards had been constantly improving during the past year; that complaints were less frequent, and that where these were made they received prompt attention from the managers. In some instances, as at St. Louis, we could find no evidence of any complaints, while at all yards visited it was the general testimony of producers, shippers, commission men, traders and others who were examined that the management was satisfactory and the facilities were being constantly improved. We refer to the evidence returned herewith for the details on this subject. Your trustee feels constrained to observe, however, that it was a source of gratification to find that the relations between the management of the stockyards companies and the public was so satisfactory as evidenced by the testimony of the various persons representing different branches of the industry who were examined, and it was their universal opinion that the management was good, that the business received prompt and efficient attention, and that such minor complaints as related to the price of feed, or the service rendered, which would be inevitable in a business of this kind, received the prompt attention of the management, and the objectionable conditions, if they were found to exist, were remedied.

There were two matters as to which special inquiry was made by your trustee on his recent visit to said yards, and which deserve special mention.

[fol. 1560] (1) The Development of the "Drive-in" Business

As a result of the improvement of public highways and the enlarged use of automobiles and automobile trucks, there has been a very rapid development in the so-called "drive-in" business—that is, cattle, hogs and sheep brought into the stockyards from local territory in automobile trucks. This business has now become so extensive that it covers generally the area within 75 or 100 miles of the respective stockyards, the distance dependent upon local conditions and the conditions of the highways. Where cattle are brought in by private conveyance of this character, the stockyards company necessarily loses the unloading charge of $1.00 per car, which is paid by the railroads for stock brought in by rail. In most instances, cattle specially in the cases of hogs, brought in by private conveyance is promptly sold on arrival at the stockyards, and the stockyard loses to some degree on the same in feed, etc., which would otherwise be furnished. While the testimony develops that this business has grown very greatly, and it is anticipated that in a short time practically all live stock within 100 miles of the yards will be brought in in this way, it has not as yet affected the earnings of the companies to such a degree as to make any changes in the yards or any discrimination in charges as between cattle driven in and those brought in by rail. The testimony, however, discloses a very interesting development of the business along this line, which may in course of time make necessary some modifications in the present methods of handling business [fol. 1561] at the yards.

(2) The Development of Cooperative Selling Agencies

Within the past year there appears to have been a very decided development of cooperative selling agencies in some of the yards. The increase in this business varies at various yards, as will appear from the evidence. Your trustee made careful inquiry to ascertain if there was any discrimination either by the stockyard companies or the

packer buyers against such cooperative agencies in the handling or purchase of live stock, but the testimony was that such discrimination did not exist. It was admitted by the representatives of these agencies who were examined in every instance where it was possible to do so, that the stockyards companies gave them the same facilities and service as was furnished regular commission men, and that the packers bought from such cooperative selling agencies without discrimination. There was evidence in some yards of disagreement between such cooperative agencies and the regular commission houses, which is probably not unnatural, in view of the fact that such agencies if developed would make a serious inroad upon the business of the commission men. This matter, however, did not appear to your trustee to be within the scope of his jurisdiction under the decree, but was a matter of the relationship between persons on the yards, which if it required public control at all would come within the scope of the jurisdiction of the Secretary of Agriculture under the Packers [fol. 1562] and Stockyards Act. In any event there was no suggestion that the management of the stockyards was guilty of any discrimination as between these agencies and the regular dealers on the yards.

(3) The Operation of the Packers and Stockyards Act

Since the plan under which your trustee is acting was put into effect, the Act of Congress known as the Packers and Stockyards Control Act was passed, giving to the Secretary of Agriculture general control and supervision over the operation of the stockyards and the rates, charges, etc., thereon. Under the terms of this Act the Secretary of Agriculture appoints supervisors, one of whom is stationed at each yard, these supervisors being shifted from yard to yard from time to time. At each of the hearings held by your trustee the supervisor appointed under this Act was present, and was invited to ask any questions relating to the matters under inquiry which might occur to him. By examination of the evidence taken at these hearings, it will appear that your trustee made inquiry at every yard as to the effect, beneficial or otherwise, of the operation of this Act, it being deemed a pertinent inquiry as affecting the necessity for the prompt sale of the stock deposited under

said plan, and as bearing upon the proper administration of said yards.

Your trustee found that the testimony without exception so far as can now be recalled developed the opinion of producers, shippers, traders and commission men generally to the effect that while the operation of the Act had made [fol. 1563] as yet but little difference in the actual conduct of the business on the yards, its effect had been beneficial, specially upon the relations between the public and the stockyards, in that it had provided at each of the yards an authorized representative of the Department of Agriculture, to whom any person having complaints of any matter arising on the yards could present such complaints for adjustment. It was the general testimony of the management of these yards that the supervisors appointed by the Department of Agriculture had been useful in the adjustment of such questions and in bringing to the attention of the management any matter which might be the subject of complaint which had escaped their attention, and that the presence of these supervisors and the knowledge that the yards were under the general supervision of the Department of Agriculture had tended to satisfy the public, to remove irritation and complaint, and to allay any demand which had theretofore existed for a change in the control of said yards. The attention of the court is invited to the testimony of the various witnesses on this subject, to be found in the evidence returned herewith. The discussion of these matters contained in the report of your trustees of April 8, 1922, will be generally applicable and need not now be repeated.

Upon the information so obtained and other information acquired from time to time by your trustee from various sources, your trustee reached the conclusion that the stockyards and the stockyard terminal railroads are not now [fol. 1564] being used in violation of the anti-trust laws of the United States, or of the decree of this court in this cause.

II

As to Sale of Stock Held by Swift and Armour Groups of Defendants in said Stockyard Companies in Accordance with said Plan

In the former report filed herein your trustees brought to the attention of the court the efforts which had been made

to sell the stock held by the Swift and Armour groups of defendants in said stockyards, including the advertisement which was inserted in numerous newspapers listed in said report asking for bids for said stock, with the results obtained therefrom. It will appear from that report that all efforts made up to the filing of same to dispose of any substantial amount of the stock had proven unsuccessful. Your trustee is advised that in the past year the owners of said stocks have kept up a constant inquiry as to any possible opening which might be presented for the sale of such stock at a reasonable price, as provided in said plan, but as yet have been unable to receive any offer for said stocks or any substantial part thereof. During the recent visit of your trustee to said stockyards, inquiry was made at every point of bankers, business men and others who might be informed on the subject, including shippers and producers selling on said yards, as to whether it would be practical at this time to sell the stocks of the Swift and Armour groups of defendants in the respective yards in the territory served thereby, and the testimony was generally to the [fol. 1565] effect that such sale would not be practical.

Your trustee also inquired carefully into the existing sentiment in the various communities served by said stockyards with respect to requiring the sale of said stocks and the separation of the packers from any ownership of stock in said yards, or from the management of said yards. This inquiry was made with special care at Fort Worth, in which territory the sentiment in favour of the segregation of the stockyards from packer ownership was said to have been largely developed, and at Omaha where there was also some sentiment on the subject. The testimony of various witnesses representing various branches of the industry was to the effect that any sentiment which had heretofore existed for the segregation of the stockyards from packer interest or control had largely died out, and that this result had been further contributed to by the enactment and operation of the Packers and Stockyards Control Act. The only witness among the many examined who still felt that the packers should be required to sell their stock in the stockyards and the management be entirely divorced from packer interest was Mr. E. L. Burke, whose evidence will

be found in the record, p. 239. He felt that the present management was good, but that as a matter of principle the ownership of stock in the stockyards by the packers was bad. The court is referred to his testimony for his views on the subject.

The evidence was universal to the effect that the stockyards company had nothing to do with the sale or handling [fol. 1566] of live stock on the yards, except to provide the facilities and service, and your trustee was unable to develop any evidence of the slightest discrimination on the part of stockyards companies as between packers and other buyers. The testimony was also general that there was full and free competition in the purchase of live stock upon the yards at all points visited.

Your trustee felt that an investigation of these conditions and the present state of public sentiment and the presentation of the facts resulting therefrom would be helpful to the court in reaching its conclusions as to further action in this connection, and the court is referred to the testimony returned herein of the persons examined, which evidence has been herein summarized.

From the facts presented, and from inquiries made, your trustee has reached the conclusion that while no substantial results have been secured by the efforts to sell the stock of the Swift and Armour groups of defendants deposited under said plan, yet it is believed that the said defendants have made sincere efforts to sell said stock, and that up to the present time their efforts in this regard have met with no substantial success.

III

Voting Stock under the Plan

As already indicated, your trustee has during the past year voted the stock deposited under said plan for the continuance of the existing managements, with such changes in [fol. 1567] personnel as have been suggested by the owners of said stock, or made necessary by other conditions. As indicated above, a number of the companies have during the past year declared stock dividends, resulting in a decrease of the capital stock of such companies. Your trustee deemed it his duty under the terms of said plan to vote said stock in favour of such increased stock issues where

requested by the owners thereof, and it has been so voted.

As indicated above, in view of the fact that the voting power was originally vested in Honourable George Sutherland and the undersigned jointly, and has since his resignation been exercised by the undersigned as sole trustee by agreement of the respective parties to this litigation, it is suggested and respectfully requested that this court enter a decree approving and ratifying the action of the said trustee in voting said stock as sole trustee as reported herein.

IV

Exhibits Returned

Your trustee respectfully returns the following exhibits:

Exhibit No. 1. Statement of changes in capitalization and official organization of the various stockyard companies in which the stock is deposited under said plan.

Exhibit No. 2. Report of hearing held at Jersey City Stockyards February 15, 1923.

[fol. 1568] Exhibit No. 3. Report on the Denver Union Stockyards Company with accompanying exhibits.

Exhibit No. 4. Report on the St. Paul Union Stockyards Company with accompanying exhibits.

Exhibit No. 5. Testimony taken at various stockyards companies February 17 to February 21, 1923, with exhibits accompanying same.

Exhibit No. 6. Notices of hearings and newspaper clippings relating to the same.

Your trustee holds himself in readiness to furnish to the court any additional information on any point on which the court may desire the same within the scope of his duties under said plan, and to submit to the court upon its request any recommendations or suggestions which may be desired pertaining to the matters within the scope of his duties as prescribed by said plan.

Respectfully submitted.

(Sgd.) Henry W. Anderson, Trustee.

March 21, 1923.

[fol. 1569] PETITIONER'S EX. 165

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 10745

NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES

v.

DIRECTOR GENERAL OF RAILROADS et al.

Docket No. 10745, Sub. No. 1

SOUTHERN WHOLESALE GROCERS' ASSOCIATION et al.

v.

SOUTHERN RAILWAY COMPANY et al.

BRIEF ON BEHALF OF ARMOUR & COMPANY, MORRIS & COMPANY, WILSON & COMPANY, and SWIFT & COMPANY, Interveners

H. K. Crafts, Attorney for Armour & Co. Luther M. Walter and John S. Burchmore, Attorneys for Morris & Co. George P. Boyle, Attorney for Wilson & Co. R. D. Runder, Attorney for Swift & Co.

Chicago, Ill., September 7, 1920.

[fol. 1570] In the brief entitled as above, beginning on page 10 and continuing to and including part of page 17, it is said:

The Decree of February 27, 1920

Under date of February 27, 1920, a decree was entered by Chief Justice McCoy in the Supreme Court of the District of Columbia (In Equity, No. 37623) in a proceeding in which the United States of America was petitioner and Swift & Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company, together with certain subsidiary companies of each and certain officers of each, were defendants. The decree is printed in full at pages 407-430 of the Abstract of Evidence and we request that it be read and considered by the Commission.

Certain comment upon the decree is deemed proper at this point.

In the first place, it is to be noted that the decree was what is known as a "consent decree." The entry of the decree submitted by the Attorney General, was consented to by the defendants without hearing. It is specifically stated in the stipulation upon which the decree was entered that such stipulation "shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States."

The Commission can hardly be unaware that during the past year or two there has been considerable criticism from different sources directed against the larger packing companies. The packers have believed that they were doing all in their power in difficult times, to serve well and economically that portion of the public to whom they sold their [fol. 1571] meats and packing-house products. The packers had found it to be economical, from a business standpoint, in view of the organization and facilities already existing and necessary for the sale of fresh meats and packing-house products, to utilize that organization and those facilities for the handling and sale of certain other articles. Such utilization tended to reduce the overhead expense as well as the selling expense in connection with all of the articles dealt in and was, therefore, a practice of benefit to the public as well as to the individual packer. Nevertheless this action of the packers brought about numerous protests, the present proceeding being in fact one of the efforts made by certain classes of merchants towards eliminating the competition in certain articles of the packing companies.

The Commission is probably aware that the merchants who objected to the sale by the packers of the articles generally dealt in by the wholesale grocers earnestly urged before committees of Congress the enactment of legislation under which the packers would no longer be permitted to manufacture, deal in, or sell such articles. Earnest efforts to the same end were the subject of proceedings before the Federal Trade Commission, and the reports of the Federal Trade Commission have to some extent been placed in evidence in this case. These reports of the Federal Trade Commission were made on ex parte proceedings in which

the packers were denied the opportunity to produce or examine witnesses. In all of the steps taken to bring about the elimination of packer competition in the sale of certain articles, it was loudly and constantly asserted that the larger packers were attempting to obtain a monopoly control of the sale and distribution of the principal food products of the country.

It was in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be disputed by [fol. 1572] any intelligent mind that the packers defendant in the equity proceedings consented to the entry of the decree in that case.

Under this decree, within two years from the entry thereof, or not later than February 27, 1922, the defendants will cease dealing in practically all of the articles competitive with the wholesale grocers except cheese, lard compounds or substitutes, peanut butter, butter substitutes and soap. Under this decree the packers will continue to deal not only in fresh meat and packing-house products, but also in what are commonly known as dairy products, that is, dressed poultry, butter, eggs, and cheese; and also in those commodities which are made in part from the products of packing houses such as soap, lard compounds, oleomarg-ine, mince meat, etc.

The articles which the packers will cease to handle under this decree are listed in detail in the decree under the following general headings:

1. Fresh, canned, dried or salted fish;
2. Fresh, dried or canned vegetables; except in combination with meats;
3. Fresh, crushed, dried, evaporated, or canned fruits, except when used as an ingredient of mince meat;
4. Confectionery syrups, soda fountain supplies;
5. Molasses, honey, jams, jellies and preserves of all kinds;
6. Spices, sauces, condiments, relishes and sauerkraut;
7. Coffee, tea, chocolate and cocoa;
8. Nuts, not including peanuts;
9. Flour, sugar and rice;
10. Bread, wafers, crackers, biscuits;
11. Cereals;

12. Grain;
13. Miscellaneous articles including cigars, china, etc.
[fol. 1573] 14. Grape juice.

It should be understood in this connection that none of the five defendant packers, nor all of them combined, have dealt in all of the articles named in the decree; and that some of the defendants have handled very few of such articles.

The articles so listed in this decree appear to include all of the articles specifically named in the complaint of the National Wholesale Grocers' Association except cheese, peanut butter, soap and soap powder.

Soap and Soap powder are considered by the packers as packinghouse products, and they are the manufacturers of the soap in which they deal, certain constituents and elements of which are the products of animals. Cheese and the other dairy products are articles for which the packers' facilities by way of cold storage warehouses and refrigerator cars are peculiarly a necessity and it is believed that the continued dealing in the dairy products by the packers is for the general public good.

It must be realized that the decree brings about a condition much more favorable to the wholesale grocers than any they could have obtained through the entry of any order by the Commission in this case. Any such order as is sought by complainants would simply have made it more difficult or more expensive for the packer to continue to deal in certain articles, by removing such articles from the ordinary channels of distribution employed by the packer, but it would not necessarily have resulted in a discontinuance by the packer of the manufacture or purchase and sale of such articles. Under the decree, however, the packers are absolutely eliminated as competitors of the wholesale grocers, or any other class of merchants, with respect to all articles except cheese, soap, peanut butter, and [fol. 1574] the complaint of the National Wholesale Grocers' Association correctly indicates the articles in which the grocers are principally interested, then under the decree the competition of the packers is eliminated with respect to all articles except cheese, soap, peanut butter, and lard and butter compounds and substitutes.

It may be mentioned in passing that the two-year limit allowed for compliance with the decree was in order that

the packers might dispose through normal channels and without undue losses of any of their stocks of goods on hand at the time of the entry of the decree. The defendant packers are carrying out in good faith the terms of the decree. It is expected that they will have complied with the decree, in so far as it relates to their discontinuance of the sale of certain articles, well in advance of the time allowed by the decree. The decree also makes certain requirements with respect to the ownership of stockyards, and other matters, which are not material to the present proceeding.

In this connection attention should be called to the third section of the decree, which prohibits the defendant packers, through any device or arrangement whatsoever, from using or permitting the use of their distributive system and facilities, including their branch houses, route cars, and auto trucks, in any manner, for the purchase, sale, handling or transporting of the articles specified in the decree. The consent of the packers to this provision of the decree was not because such facilities had been used in any unlawful manner, but simply in order that it might not later be charged that a loophole was open by which affiliated interests could engage in the same business through the packers' facilities. In other words, the agreement to this section of the decree was in order that the good faith of the defendants might be established beyond [fol. 1575] question, and not because such facilities had been used in any unlawful manner, in violation of the Interstate Commerce Act or of any other law of the United States.

With respect to the articles not relinquished by the packers under the decree, the record shows clearly that there is little, if any, dealing or shipment by the wholesale grocers in dressed poultry, butter and eggs. This is doubtless because these articles, if they are to be delivered to the consuming public in sound and unspoiled condition, require the use of refrigerator cars in transportation and the use of cold storage warehouses while in storage awaiting transportation or sale. Generally speaking, wholesale grocers have not provided themselves with cold storage warehouses in which to hold the dairy products while awaiting the sale and shipment of these articles and for this reason do not deal in them to any great extent. The

wholesale grocers apparently do a considerable business in cheese, especially in the kinds of cheese and at seasons of the year when cold storage is not an absolute prerequisite to the handling of the commodity; nevertheless it is a matter of common knowledge that refrigeration, both during storage and in transit, is an absolute prerequisite to the proper distribution of cheese through the country and especially in the warmer parts of the country.

Southern Wholesale Grocers' Association Satisfied by the Decree

It had been expected by the five larger packers that after the entry of this decree the complainants would not deem it necessary to continue this proceeding, inasmuch as the decree absolutely eliminated the competition to which the grocers object, and therefore brings about a result much more satisfactory to the complainants than any which could be obtained by means of an order of the Commission in this proceeding.

[fol. 1576] It would appear that such was the result in so far as the Southern Wholesale Grocers' Association, the complaint in No. 10745, Sub No. 1, is concerned. After the entry of the decree counsel for the Southern Wholesale Grocers' Association filed with the Commission a motion that its complaint be placed upon the suspense docket pending the carrying out of the terms of the decree by the defendant packers. The National Wholesale Grocers' Association did not concur in this motion and insisted upon going forward with the hearings. Therefore, the motion of the Southern Wholesale Grocers' Association was not granted by the Commission.

The satisfaction of the Southern Wholesale Grocers' with the decree is set forth in a letter dated February 9, 1920, addressed to Mr. J. H. McLaurin, president, Southern Wholesale Grocers' Association, Jacksonville, Fla., by Edgar Watkins, Esq., counsel for that association. Mr. Watkins transmitted to Mr. McLaurin with this letter a copy of the decree, and explained in detail the provisions of the several sections and paragraphs of the decree. With respect to the general subject matter covered thereby, Mr. Watkins made the following statement in said letter:

"From a somewhat extensive experience in courts of equity, I have never seen another decree so comprehensive

as is this. It prohibits acts which Congress could not constitutionally prohibit, and it grants relief to the people broader than any granted by any other decree ever entered by a court of the United States. It is not merely a dissolution decree, as most of the decrees heretofore entered in anti-trust suits have been. It is a constructive plan to enforce fair business practices and it provides not only a means for its enforcement, but a method whereby it may be enlarged."

The letter clearly indicates that the elimination of the grocers as competitors in the sale of the articles described in the decree undoubtedly brought to the hearts of the members of the Southern Wholesale Grocers' Association a degree of joy and satisfaction which could not have been obtained by any order affecting merely the transportation [fol. 1577] of these articles. In other words, this decree attained the real object sought by the wholesale grocers, both in the north and the south, namely the elimination of the competition of certain large concerns organized to do business in an efficient manner and upon a small margin of profit.

[fol. 1578] PETITIONER'S EX. 166

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 10745

NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES, Complainant,

v.

WALKER D. HINES, Director General of Railroads, et al., Defendants

BRIEF FOR COMPLAINANT

* * * * * * *

In the course of this brief, we will have occasion to discuss the Attorney General's so-called consent decree. The justification for that decree is the justification for our

action in this case. But the relatively small tonnage affected by the decree and the inconsequential character of the decree as a practical solution of the problem, will be briefly considered in our discussion of this case. In a word, transportation is the heart of the problem, and the evils at which the consent decree struck will find no genuine remedy until the Interstate Commerce Commission shall enforce equality of service by a suitable order against the public carrier, a vital order effectively compelling compliance in practical fashion with the statutory mandate against discrimination (pp. 7).

* * * * * * *

[fol. 1579] The Consent Decree as a Remedy

The consent decree entered in the Supreme Court of the District of Columbia February 29, 1920, by the United States against the five largest of the meat packers who came forward and intervened in the present case, require that these packers shall within two years (the court of course has power to extend that time, and appeals for extension are now under consideration) discontinue their business in the so-called unrelated lines. They are, however, permitted to continue business not only in the products of slaughtered animals, but in cheese, condensed, powedered and evaporated milk, and various vegetable products including vegetable soups, vegetable cooking oils, and vegetable cooking fats, including lard substitutes.

The Attorney-General, and not the complainant here, was the complainant in the proceeding in which the said decree was entered. That decree is in the hands of the court; it may be postponed or changed at any time. It is not effective for two years and has many limitations upon its usefulness. The decree has no legal bearing upon the present case, since the issue here is wholly one between the railroads and complainant. But the decree, of course, has a most practical bearing upon this case.

If the Commission shall find that there has been illegal discrimination by the railroads, then an order eliminating the unrelated commodities from the packers' cars which are listed in the decree will be only a legal formality, as respects both the railroads and the five largest interveners. In other words, the transportation difficulties and the eco-

nomic losses, whether to the railroads and the packers or [fol. 1580] the public, that the railroads and the packers assert will result if the Commission orders the unrelated items out of the cars, are as respects a large part of these commodities now in evidence, irrespective of any action that the Commission, the railroads or packers may take.

These dire consequences that have been imagined by the railroads and packers in this case are not certain, unless the five large packers shall put themselves in contempt of the Supreme Court of the District of Columbia.

The number of articles listed in the decree, that certain packers are alleged to be enjoined from handling, is imposing in length; but those articles constitute only about one-fourth of the so-called unrelated items handled in peddler cars by representative Chicago packers, if you make your comparison on the tonnage basis.

This fact has been established in the following manner:

The packers have proposed in this and in the Consolidated Classification case, a list of fresh meats and packing house products which they claim are entitled to the carload mixture privilege. We shall use the term "unrelated items" as applying to the articles not included in this list of fresh meats and packing house products. The list itself having been prepared by the packers, we feel justified in using the term as stated.

To this list, we need take only one exception for the purposes of the following computation: Lard. A lard substitute is not a slaughter house product; it is not a product of the slaughtered animal. With this in mind, we direct attention to the testimony of the leading traffic witness for Swift & Company, to the effect that 26.75 per cent of their tonnage in peddler cars consisted of these unrelated items, as follows:

[fol. 1581] Soap (7.04 per cent).
Oleomargarine (3.12 per cent).
Fish (.46 per cent).
Cheese (2.7 per cent).
Libby goods (5.8 per cent).
Dairy products (2.46 per cent).
Lard compounds (5.8 per cent).

Of this entire list, only 5.8 per cent (Libby goods) plus .46 per cent (Fish) or 6.26 per cent, are affected by the

decree. The canned meats and other canned foods containing these ingredients should be deducted from that figure.

Therefore, of the unrelated items constituting 26.75 per cent of the total, there are only 6.26 per cent, or about one-fourth which are affected by the decree.

During the trial the complainant asked the intervening packing companies and the defendant railway companies, if they would give their consent for the Commission to make an order that the carrier defendants should revise their tariffs, rules, regulations and practices so as to provide that the so-called unrelated items listed in paragraph 4 of the decree should not be shipped with fresh meats and packing house products in the same privately-owned or railroad-owned refrigerator or peddler cars (Tr., 2012).

Mr. Rynder, on behalf of Swift & Company, replied:

"I want to say that we certainly will not object to any order that would not be divergent from the terms of that decree" (Tr., 3536).

Mr. Boyle, speaking for Wilson & Company, and some independent packers, stated:

"I want to say for the interests that I represent that we will not consent to any order of the Commission excluding any articles from any refrigerator cars, either in peddler or branch house service, effective at any time whatever" (Tr., 3540).

[fol. 1582] Further, on behalf of Hormel & Company:

"I shall object to it from every possible angle, and will not consider it necessary to record or consider the decree at all" (Tr., 3543).

Mr. McCornack was very prompt in his statement that he would not consent to an order which affected only the articles involved in the consent decree. He gave as his reasons, first, that the companies he represented, with only one exception, were not defendants in the consent decree, and further, that the single company that was a defendant had two years in which to wind up its grocery business. As to those packers who were not defendants, he stated:

"They intend to continue the grocery business, and will until somebody stops them."

Under the terms of the decree, any member of the five principal packing firms, and two of his friends, or his niece or nephew, can organize another company and handle any of these commodities embraced in the decree, providing he does not own 50 per cent of the stock of the new company. In this connection it must be remembered how fruitless dissolution decrees by state and federal authorities have been in the past. Theoretically, they sound very well. Practically, they are of little value.

Complainant urges that the Consent Decree should not, and cannot, properly be regarded by this Commission as a true remedy for the discriminations set forth in the complaint and established by the evidence. Complainant's action is against the railroads. If there be discrimination, it is the public carriers who have practiced it, and upon the proof introduced by complainant in this case, it is submitted that the Commission should remove the discrimina- [fol. 1583] tion by a suitable order against the defendant carriers, which order would, to the extent that it included products covered by the Consent Decree, make that decree permanently good, so far as transportation is concerned, and vindicate the principles by which the Government was guided in the extended investigation and preparation that resulted in the Consent Decree. But if the principle of equality for which complainant here contends, be sound, and if the right exists to have the competitive field free and open, for which right the government itself contended, in securing the consent decree in the Supreme Court of the District of Columbia, then that principle and that right should be logically applied, and should not arbitrarily be limited to the commodities named in the decree, but extended so far as transportation is concerned to include products not belonging to the slaughtering industry in which defendant interveners in this case are engaged and for the conduct of which particular industry they have built and used private refrigerator cars.

If these interveners, as they doubtless will, should desire to continue their business in cheese and other dairy products and in the various other unrelated items, such as vegetables, cooking oils and fat, including lard substitutes, and in condensed, powdered and evaporated milk or in any other groceries or products whatever, complainant is wholly content, provided always that the public car-

riers shall not accord to these competitors, or to any others, privileges or other advantages from which members of the complainant, and in fact, other independent shippers of food products, are excluded.

Further, it is true that other packing companies not defendants in that case may attain the magnitude of the [fol. 1584] so-called Big Five. We have witnessed during the past few years a very remarkable growth of one or two companies. Whether the Department of Justice might intervene is problematical. It is common knowledge that the dissolution of the Standard Oil Company has been followed by a division of territory by Standard interests, and the Department of Justice and the courts have not interfered.

However that may be, it is certain that these discriminations would be ended once and for all, if a suitable order were entered against the carriers themselves, the railroads, who are the real parties practicing the discrimination. Such an order would apply to all shippers, whether they are parties to the consent decree or not (pp. 158-165).

* * * * * * *

Respectfully submitted.

Clifford Thorne, Breed, Abbott & Morgan, Dana T. Ackerly, R. C. Fulbright, Ralph Merriam, Attorneys for Complainant.

32 Liberty St., New York, August 14, 1920.

[fol. 1585] PETITIONER'S EX. 166A

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 10745

NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES, Complainant,

v.

WALKER D. HINES, Director General of Railroads, et al., Defendants

REPLY BRIEF FOR COMPLAINANT

* * * * * * * * *

Counsel for the interveners state in their brief that the expansion of the packers' business in the handling of

"other articles" than fresh meats and packing house products, "brought about numerous protests, the present proceeding being in fact, one of the efforts made by certain classes of merchants toward eliminating the competition in certain articles of the packing companies. The commission is probably aware that the merchants who object to the sale by the packers of the articles generally dealt in by the wholesale grocers earnestly urged before the Committee of Congress the enactment of legislation under which the packers would no longer be permitted to manufacture, deal in or sell such articles." (Interveners' petition, page 11.)

It is absolutely untrue that the National Wholesale Grocers' Association, or any officer, committee or other representative acting in any way for that organization sought at any time to have legislation enacted that would [fol. 1586] force the packers out of the business of handling certain commodities that were handled by grocers. This statement of the packers, if intended for the complainant, the National Wholesale Grocers' Association, is either knowingly wrong or is due to a misunderstanding on their part that would not have been possible; if they had taken the trouble to read carefully the official reports of hearings before committees of the House and Senate upon this subject.

Here is an effort to prove something in a brief that has no basis of fact in the evidence whatsoever.

The Southern Wholesale Grocers' Association did appear in favor of such legislation. The National Wholesale Grocers' Association, the complainant in this proceeding, purposely refrained from so appearing. The Executive Committee of the later organization and also the Legislative Committee considered the subject carefully and determined definitely and unanimously that it would not urge any such legislation. The National Wholesale Grocers' Association did not favor any one of the numerous so-called "packers' bills" pending either in the present Congress or the previous Congress, or in any other Congress. We have the complete record and know positively that the National Association has taken no such action since the date of its organization in 1906.

The only legislation the National Association would have favored, as was decided by its Executive Committee and its Legislative Committee and approved by the members

would have been a bill designed merely to place the packers and the grocers on an even plane without any special privileges for either. It was said again and again in these meetings of the Association that the entire field should be free [fol. 1587] and open for the packer and for the wholesale grocer as well as for any other competitor or prospective competitor. The fact is, however, that not even a bill of this kind was introduced or urged or supported by or at the instance of the National Association or anyone representing it.

One of the reasons that decided the Association not to take such action was the determination, upon the advice of counsel that the institution and completion of the case that is now under way before the Interstate Commerce Commission would be the fairest and most effective means of presenting the claims of the wholesale grocers and to secure permanent relief by an order against the railroads themselves.

If it be said that Mr. Bode in appearing before the House Committee at Washington in January, 1919, spoke for the National Wholesale Grocers' Association, one has only to refer to the official report of that hearing; he appeared only as an individual and as an officer of Reid, Murdoch & Co., of Chicago. He did not urge the enactment of any bill then pending; and he was not at that time, and is not now, an officer of the Association, or a member of any committee having to do with this subject. Moreover, he did not favor legislation in any specific form, and was one of those who considered the railroad problem paramount.

We have taken liberty of going out of the record on this matter following the precedent established by the distinguished counsel for the packers on this subject. There is absolutely nothing in the record to sustain the packers' charge, if it be directed at the complainant in this case (pp. 4-7).

* * * * * * *

[fol. 1588] What Commodities Need Refrigeration

In our suggested order, we have proposed the elimination from the lists of "fresh meats and packing house products," and therefore, from the packers' care the fol-

lowing articles: butter; renovated butter; cheese; eggs; canned fish and tamales; canned spaghetti-meat chili; canned pork and beans; mincemeat, canned meats with vegetable ingredients, lard substitutes and lard compounds, canned soups, soaps and butter substitutes, not having over 20 per cent beef, pork or mutton ingredients therein; cottonseed cooking oil; peanut cooking oil; soya bean cooking oil and corn cooking oil.

The counsel for the interveners have suggested that under the so-called "consent decree" the competition of the packers has been eliminated with respect to all articles in which the wholesale grocer is concerned (adopting the grocers' complaint as correctly indicating these articles), except cheese, soap, peanut butter, and lard and butter compounds and substitutes. This needs some qualification; but for the sake of the present discussion let us assume it as accurate. There should be no practical objection from the principal packers to the elimination of the commodities listed in the consent decree from the packers' cars; and, according to the packers this includes the following:

1. Fresh, canned, dried or salted fish;
2. Fresh, dried or canned vegetables; except in combination with meats;
3. Fresh, crushed, dried, evaporated, or canned fruits, except when used as an ingredient of mincemeat;
4. Confectionery syrups, soda fountain supplies;
5. Molasses, honey, jams, jellies and preserves of all kinds;

[fol. 1589] 6. Spices, sauces, condiments, relishes and sauerkraut;

7. Coffee, tea, chocolate and cocoa;
8. Nuts, not including peanuts;
9. Flour, sugar and rice;
10. Bread, wafers, crackers, biscuits;
11. Cereals;
12. Grain;
13. Miscellaneous articles including cigars, china, etc.;
14. Grape juice. (Packers' Brief p. 12-13.)

Neither the argument, as to the necessity for refrigeration nor the "economic" argument as affecting the public, or the packers, or the railroads, is of any consequence as to the preceding list of articles, because they come out of

the cars under the terms of the decree, according to the packers.

Dressed poultry is not contained in the current lists of fresh meats and packing house products, and under our suggested ruling would be excluded from the packers' cars. We have suggested that butter, renovated butter, and eggs, should also be excluded. As previously stated we are leaving the discussion of dressed poultry, butter and eggs to be presented by the representatives of the various produce organizations that have intervened in the case.

The main controversy hinges about the five commodities listed on page 14 of the packers' brief; as to the balance the principal arguments of the defendants fail, and the objections of the principal packers to an order in harmony with our request can have little force, because they have already agreed to abandon the handling of these articles. These other articles are not the products of slaughtered animals, they are not the products of the meat packing [fol. 1590] industry; and neither the public nor the packers will suffer because of an order by the Commission. Such an order will prevent new companies organized with the same individual packers not holding over 49 per cent of the stock, developing along the very lines the decree seeks to prevent, using the unfair and discriminatory practices which have enabled the "Big Five" to make such rapid inroads in any field they entered. It will also prevent the independent packers, not parties to the "consent decree," from using their peddler cars and refrigerator cars in distributing these same grocery lines and thereby obtaining the preferential and discriminatory service which has occasioned this proceeding.

All the other arguments we have advanced apply with full force to these articles.

Counsel for the principal packers state:

"Under the decree, however, the packers are absolutely eliminated as competitors of the wholesale grocers, or any other class of merchants with respect to each of the articles named in the decree; and if the complaint of the National Wholesale Grocers' Association correctly indicates the articles in which the grocers are principally interested, then under the decree the competition of the packers is eliminated with respect to all articles except cheese, soap, peanut butter, and lard and butter compounds and substitutes" (Interveners' Brief, 14).

The foregoing sentence is somewhat too strong. The packers are not absolutely eliminated as competitors of the wholesale grocers for several reasons: First, the independent packers were not parties to the consent decree; they are not affected to the slightest extent by that order. They can continue putting these unrelated items in their peddler cars and in their refrigerator cars, thereby getting preferential special service in the distribution of these grocery articles, which the wholesale grocer cannot obtain. This is not an imaginary or theoretical prospect, for the inde- [fols. 1591 & 1592] pendent packers announced at the trial that they intended to do that very thing. (Tr. 3543.)

2d. The decree forbidding the defendants handling these various unrelated items runs against the corporations and not the individuals. So far as the individuals are concerned, they can organize other companies and handle these same articles, or they can create separate corporations organized to operate these refrigerator and peddler cars, in which the said individuals do not hold over 49 per cent. of the stock.

The methods of other large business interests and how they have continued the operation of their various industries in spite of dissolution decrees, is common knowledge.

* * * * * * *

Respectfully submitted.

Clifford Thorne, Breed, Abbott & Morgan, Dana T. Ackerly, R. C. Fulbright, Ralph Merriam, Attorneys for Complainant.

32 Liberty St., New York, Sept. 23, 1920.

[fol. 1593] Gov. Ex. 4

The Great Atlantic & Pacific Tea Co., National Fresh Meat Department, 211 W. Wacker Drive, Chicago, Ill.

P. O. Box 1123

October 13th, 1930.

Mr. H. B. Teegarden, Special Assistant to the Attorney General Department of Justice, Washington, D. C.

My Dear Mr. Teegarden: We received your letter of October 9th.

From the figures available, the products handled in our Meat Department by the various packers would be divided approximately as follows:

Swift and subsidiaries	14% of our business
Armour and subsidiaries	12%
Wilson and Cudahy	8½%
The other Independents	65½%
Total	100%

In reference to your last paragraph, it would be quite impossible for us to furnish you with a complete list of the Independent packers. We estimate very conservatively that in our fifty units we are doing business with at least three hunderd Independent and local slaughterers and sausage makers. The New England Division alone last month did business with over fifty-five local concerns. Among the most prominent packers who are enjoying a good share of our business in certain localities are: Kingan, Morrell, Dold, Allied Packers, Kahn, Rath, Hormel, Oscar Mayer, Sinclair, Decker, Eastside Packing Company, St. Louis Independent, Columbus Packing Company, Miller & Hart and Roberts & Oake.

The reason that the Independent local packers are enjoying such a large share of our business is that on such highly perishable products such as Veal, Pork and Sausage, it is very desirable to buy nearby, home dressed merchandise.

If there is any further information that you would like us to give you, we would be very glad to be of service to you.

Very sincerely yours, T. A. Connors, National Fresh Meat Representative.

TAC-M.

[fol. 1594] Gov. Ex. 5—Oct. 20, 1920

The Great Atlantic & Pacific Tea Company

Established 1859

Executive Offices: Graybar Building, 420 Lexington Avenue, New York, N. Y.

September 8, 1930

Mr. H. B. Teegarden, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

DEAR MR. TEEGARDEN: Referring to your conversation when you were in our office on the 6th, we are listing below our Company's approximate annual purchases in dollars from certain manufacturers, as follows:

Campbell Sales Company	$10,517,000
National Biscuit Company	22,738,000
H. J. Heinz Company	2,700,000
Van Camp's	1,250,000
Procter & Gamble Distributing Co.	11,500,000
Clicquot Club Company	770,000
Pillsbury Flour Mills Company	6,000,000
California Packing Corporation	15,000,000

In regard to the information which you requested on the Gold Dust Corporation, we find that this concern controls the following companies:

Best Foods Company,
Preserves & Honey, Inc.,
2 In 1,-Shinola—Bixby Corporation,
Hecker—H. O. Company,
Hecker, Jones, Jewell Milling Co.,
Southwestern Milling Company,
Duluth-Superior Milling Co.,
Northwestern Consolidated Milling Co.

We haven't the information here showing our purchases from these various flour milling companies in the Gold Dust Corporation, but we are taking it up with our Minneapolis buying office and will be glad to forward this information to you as soon as it is received. In the mean-

time, we can give you our purchases from the other companies in the Gold Dust Corporation, as follows:

Best Foods Company	$3,100,000
Gold Dust Corporation (Soaps & Soap Powder)	755,000
Preserves & Honey, Inc.	175,000
Shoe Polishes (2 In 1, Shinola, Bixby)	125,000

[fol. 1595] We are further advised that the above figure showing purchases from the Pillsbury Flour Mills Company represents only Pillsbury brand Family Flour and does not include any purchases we might have made from them during the past year of unlabeled flour for bakery use. Also will be glad to include this additional information when we hear from our Minneapolis office.

Yours very truly, The Great Atlantic & Pacific Tea Company. C. W. Parr.

CWP-EO.

[fol. 1596] Gov. Ex. 6

This agreement, made and entered into this 9th day of May, 1919, by and between the Producers' Warehouse Company, a Corporation of the State of California, with principal office in San Francisco, California, first party, and Armour & Company, a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with principal office in the City of Chicago, Illinois, second party, witnesseth:

[fol. 1597] 1. First party hereby agrees to sell and deliver to second party, and second party agrees to purchase and receive from first party, all the California canned fruits required by the business of second party and Armour and Company, a corporation of the State of Illinois, during the life of this contract, except that purchased by second party from the California Growers Association under its contract with that Association, dated May 7, 1919, limited by the capacity of the factories operated by first party. Not later than January 1st, of each year, second party shall furnish to first party a list showing the quantity of the various canned fruits which will be required by the business of said companies from the pack of the cur-

rent calendar year, which list, in addition to the quantity, shall show the size of the container, the brand, grade and variety. All containers shall be furnished by first party.

2. Said goods shall be shipped by first party from time to time and to points designated by second party, as ordered, in carload lots, delivered f. o. b. cars at points in California, taking rates not higher than the rates from intermediate rate points in California. Goods to be shipped locally to points in California shall be delivered f. o. b. cars at factories, it being understood, however, that whenever possible such goods shall be furnished from those factories located nearest to the point of destination.

3. The price to be paid by second party for said goods delivered as aforesaid during any year shall be the prices used by the California Packing Corporation in confirming its sales to the trade generally, provided, however, that first party shall not be required to sell any particular grade of goods to second party at prices which, less the discounts mentioned below in this paragraph and paragraph four hereof, are less than the fair value of the fruit plus its actual cost of manufacture, and in case the parties are unable to agree upon a price to be paid for such grades, second party shall not be required to accept the same. Said prices shall be subject to a discount of five per cent (5%) plus a further discount for cash of one and one-half per cent (1½%).

Subject to the provision aforesaid, it is the understanding that the first party shall meet the competition of the California Packing Corporation with respect to prices and should the California Packing Corporation during any year in good faith reduce its prices to the trade generally for that year, and make such prices retroactive, or should first party make prices to others lower than those of the California Packing Corporation, it is agreed that second party shall have the benefit of such reduced prices, whichever are the lower, with respect to all goods unshipped and also all goods which second party has on hand unsold at any of its places of business. Such reduced prices—either those of the California Corporation or those of first party whichever are the lower—shall be the prices which second party shall pay first party for such goods less the discounts mentioned above. The prices for goods [illegible]

for shipment to foreign countries shall be the prices of the California Packing Corporation for such goods, less the discounts herein specified, provided the net prices are not [fol. 1598] less than the fair value of the fruit plus the actual cost of manufacture.

[fol. 1598] First party shall have the right after December 31st of each year of selling any goods which it has on hand and not taken by second party, at any price it may see fit, without affecting the prices paid by second party for fruit there-fore delivered to it, provided first party first offers such goods to second party.

Sight drafts are to be drawn by first party on second party at its Chicago office covering shipments, payable in New York or San Francisco Exchange ten days from date of invoice. The drafts shall be accompanied by the original bill of lading and invoice, and copy of the bill of lading and copy of the invoice shall be sent to second party's Branch House to which the particular shipment is destined.

4. Any goods remaining unshipped and subject to the orders of second party on December 31st of each year, shall be billed on that date and drafts drawn against warehouse receipts for the goods and second party agrees to pay said drafts within ten days from receipt of documents. Where goods remain in storage after December 31st of any year, the storage charges are to be the regular lawful rates, and the insurance is to be taken care of by second party. First party shall not be required to store any goods for second party for a period longer than four months after December 31st of any year.

A further discount of one-half of one per cent is to be allowed to cover claims for swells. No further allowance shall be made on this account, excepting in case of some product which may show defective processing at time of delivery, and be promptly reported for investigation. If an adjustment cannot be agreed upon the goods shall be rejected by second party and accepted by first party, and the price paid therefor plus freight charges refunded to second party.

[illegible]

1st of each year, and provided also that the change in quantity shall be in direct proportion on all of the varieties in said lists, excepting as may be hereafter agreed upon.

6. The labels required for goods covered by this contract shall be supplied and affixed by first party. On or about January 1st of each year, first party shall order sufficient labels to cover second party's requirements of canned fruits as shown in the lists above mentioned and such additional labels as second party may specify, at the lowest prices obtainable, subject to second party's approval. All such labels shall be stored by first party at their expense in suitable storage and under warehouse receipts issued to second party, and shall be covered by first party with insurance in reliable insurance companies payable to second party. Second party shall pay for all such labels as purchased, but first party shall repay second party therefor the actual cost thereof as they are used by first party in labeling the goods intended for second party under this [fol. 1599] contract, the amount thereof to be deducted by second party from the invoices covering such goods. The freight and expense of handling the additional labels above specified shall be borne by second party.

The designs for all labels shall be furnished by second party. First party shall furnish a supply of box plates for printing the heads of cases in one color in designs satisfactory to second party.

7. Should any question arise as to the quality or condition of the products delivered under this contract, owing to any error or negligence on the part of the first party, the second party agrees to notify first party promptly upon the examination of the products and a determination of their quality or condition, and first party shall be given full opportunity for the inspection of the goods, and second party shall not make any disposal of the same to the detriment of the first party. Disagreement as to any matter of fact arising out of this contract to be settled by arbitration. Buyer and seller each to select one arbitrator, who if unable to agree, shall jointly select a third. The decision and award of a majority of said arbitrators shall be binding and complied with by all parties hereto. The party against whom decision is rendered shall pay arbitration fees and expenses incurred. If decision is rendered that

seller has complied with contract, invoice, if unpaid, shall become due and payable at once. When decision is rendered against seller, arbitrators shall determine and fix the amount of allowance, which amount shall be deducted from the invoice, and the correct net amount paid immediately. If payment shall already have been made, the amount or allowance awarded shall be immediately refunded.

8. It is agreed that all goods shipped under this contract are to be strictly up to the grades specified in the lists hereinbefore referred to. They are to be of first class quality for the grades sold, sound, wholesome and prepared and packed according to the highest standards of the fruit canning industry. They are also guaranteed by first party to be not adulterated or misbranded within the meaning of the food laws of the United States, as well as the laws of any state, city or municipality, and that they are manufactured in accordance with the Federal Child Labor Act, it being understood, however, that first party is relieved from any responsibility for misbranding, in view of the fact that the labels are to be prepared in accordance with designs and specifications of second party, provided the contents of the containers shall, in all respects, conform to the labels so applied as to statements regarding the quality of the goods, weights, etc. In view of the changing character of State and Municipal regulations, it is understood, however, that where the requirements of the Federal Food and Drug Acts have been met, any variations or local peculiarities arising under the Municipal Food and Health regulations shall not relieve the buyer of contractual obligations, or be considered a breach of warranty. Second party shall have the right to have its representatives present at any or all of first party's canning factories for the purpose of inspecting the canning of fruits intended for second party under this contract.

[fol. 1600] 9. The first party shall advise the second party from time to time as to market and crop conditions and shall assist the second party in every reasonable way to further its sales.

If either party hereto finds itself unable to perform any of the obligations of this contract by reason of fires, strikes, or other causes beyond its control, the performance of the contract in such respect is to be suspended until a reason-

able opportunity is afforded to remove the cause of su
suspension, and in case governmental action material
interferes with the performance of this contract by secon
party, then and in that case it shall have the right to can
cel and terminate this agreement by giving sixty days
written notice to first party of its intention so to do, an
shall not be held liable for any loss resulting therefrom
First party shall not be liable for the failure of transpor
tation companies to furnish cars or transportation
facilities.

In case of short pack, by reason of which the seller is
unable to make full delivery of any of the grades specified
it is agreed that the deliveries are to be pro-rated.

10. The first party agrees to supply f. o. b. factory free of
cost to the second party, a reasonable supply of such sam
ples as the said second party may consider necessary for
the proper development of the business. The second party
agrees to pay freight or express charges on such samples.

11. This contract shall be subject to all the effective rules
and regulations of the Federal Food Administration, the
Federal Trade Commission and other Federal Agencies.

12. The Agreement made and entered into on the fifth
day of October, 1918, by the first party hereto and the Cali
fornia Growers Association, a non-profit, non-stock Cor
poration of the State of California, with its principal office
at Los Angeles, California, as first parties thereto and the
second party hereto as the second party hereto is hereby
cancelled so far as said contract affects the parties hereto.

13. This Agreement shall not be assigned by either party
hereto without first securing the written consent of the
other and shall be and remain in full force and effect from
the date hereof until January 1, 1929.

In witness hereof the parties hereto have caused this in
strument to be executed in duplicate by their duly autho
ized agents in this behalf and day and year first above
written.

Producers' Warehouse Company, James Madi
President. Armour and Company, Arthur Mee
Vice-President.

Compared, R. G. Spencer.

(Gov't Exhibits 7-20 follow, side folios 1601-1614)

[fol. 1601]

Gov't. Ex. 7.

Packers' Condensed Statement of Operations, Year 1929

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	
Net Sales:						
Domestic	$2,839,026,963.18	$957,417,940.15	$3,296,444,903.33	$288,793,394.68	$425,268,899.30	$4
Export	78,256,967.44	42,871,641.54	121,128,608.98	.....	21,796,987.65	
Foreign sales of foreign slaughter	141,458,524.56	.....	141,458,524.56	.....	.....	
Miscellaneous operating revenue	.....	84,654.97	84,654.97	208,614.48	164,095.26	
Total	$2,558,742,455.18	$1,000,374,236.66	$3,559,116,691.84	$289,002,009.16	$447,229,982.22	$4
Cost of sales	2,175,486,112.21	917,429,702.36	3,092,915,814.57	258,357,906.17	366,434,113.14	3
Gross profit	$383,256,342.97	$82,944,534.30	$466,200,877.27	$30,644,102.99	$80,795,869.08	
Total operating expense	339,108,995.51	70,926,704.37	410,035,699.88	24,948,318.80	53,420,864.02	
Net operating profit	$44,147,347.46	$12,017,829.93	$56,165,177.39	$5,696,784.19	$27,375,005.06	
Other income	4,465,276.62	3,768,097.83	8,233,374.45	1,057,993.57	4,174,663.75	
Deductions from income	20,666,847.33	7,735,260.04	28,402,107.37	2,844,091.57	5,714,167.47	
Net profit	$27,945,776.75	$8,050,667.72	$35,996,444.47	$3,909,686.19	$25,835,501.34	
Number of concerns	4	211	215	372	245	

Number of Head Slaughtered

	Slaughterers					Miscellaneous			
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all packe
	Big fo	Other	Total						
Species:									
Cattle	6,200,074	2,162,287	8,362,361	1,105,673	9,468,034	320,742	68,610	389,352	9,857,3
Calves	3,228,156	1,210,548	4,438,704	798,850	5,237,554	77,454	121,443	198,897	5,436,4
Hogs	23,542,285	20,756,978	44,299,263	4,192,604	48,491,867	991,409	175,892	1,167,301	49,659,1
Sheep	12,322,919	2,032,254	14,355,173	1,542,057	15,897,230	100,365	59,793	160,158	16,057,3
Horses	.....	.....	.....	.....	.....	91,812	.....	91,812	91,8
Total	45,293,434	26,162,067	71,455,501	7,639,184	79,094,685	1,581,782	425,738	2,007,520	81,102,2
Number of concerns	4	211	215	372	587	192	53	245	832

*This number includes 1,809,762 head slaughtered for the account of other concerns.

Gov't. Ex. 7.

Packers' Condensed Statement of Operations, Year 1929

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	Total all packers
.....	$2,339,026,963.18	$957,417,940.15	$3,296,444,903.33	$288,793,394.68	$425,268,899.30	$4,010,507,197.31
.....	78,256,967.44	42,871,641.54	121,128,608.98	.....	21,796,987.66	142,925,596.64
of foreign slaughter.....	141,458,524.56	.....	141,458,524.56	.....	.....	141,458,524.56
operating revenue.....	.....	84,654.97	84,654.97	208,614.48	164,095.26	457,364.71
.....	$2,558,742,455.18	$1,000,374,236.66	$3,559,116,691.84	$289,002,009.16	$447,229,982.22	$4,295,348,683.22
.....	2,175,486,112.21	917,429,702.36	3,092,915,814.57	258,357,906.17	366,434,113.14	3,717,707,833.88
.....	$383,256,342.97	$82,944,534.30	$466,200,877.27	$30,644,102.99	$80,795,869.08	$577,640,849.34
pense.....	339,108,995.51	70,926,704.37	410,035,699.88	24,948,318.22	53,420,864.02	488,404,882.70
it.....	$44,147,347.46	$12,017,829.93	$56,165,177.39	$5,695,784.19	$27,375,005.06	$89,235,966.64
.....	4,465,276.62	3,768,097.83	8,233,374.45	1,057,993.57	4,174,663.75	13,466,031.77
ncome.....	20,666,847.33	7,735,260.04	28,402,107.37	2,844,091.57	5,714,167.47	36,960,366.41
ofit.....	$27,945,776.75	$8,050,667.72	$35,996,444.47	$3,909,686.19	$25,835,501.34	$65,741,632.00
s.....	4	211	215	372	245	832

Number of Head Slaughtered

	Slaughterers					Miscellaneous				
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all packers	Per cent of big four to all packers
	Big four	Other	Total							
.....	6,200,074	2,162,287	8,362,361	1,105,673	9,468,034	320,742	68,610	389,352	9,857,386	62.90
.....	3,228,156	1,210,548	4,438,704	798,850	5,237,554	77,454	121,443	198,897	5,436,451	59.38
.....	23,542,285	20,756,978	44,299,263	4,192,604	48,491,867	991,409	175,892	1,167,301	49,659,168	47.41
.....	12,322,919	2,032,254	14,355,173	1,542,057	15,897,230	100,365	59,793	160,158	16,057,388	76.74
.....	.....	.....	.....	.....	.....	91,812	.....	91,812	91,812	.....
.....	45,293,434	26,162,067	71,455,501	7,639,184	79,094,685	1,581,782	425,738	2,007,520	81,102,205*	55.85
s.....	4	211	215	372	587	192	53	245	832	

*Includes 1,809,762 head slaughtered for the account of other concerns.

[fol. 1602]

Gov. Ex. 8

Packers' Condensed Statement of Operations, Year 1928

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers
Net sales:					
Domestic	$2,222,698,206.73	$969,217,302.72	$3,191,915,509.45	$222,037,082.79	$415,966,251.60
Export	107,053,301.25	34,319,274.22	141,372,575.47	.....	16,252,786.84
Foreign sales of foreign slaughter	110,442,609.29	.....	110,442,609.29	.....	.....
Total	$2,440,194,117.27	$1,003,536,576.94	$3,443,730,694.21	$222,037,082.79	$432,119,038.53
Cost of sales	1,981,848,366.78	913,776,712.65	2,895,625,079.43	197,178,628.46	352,657,073.55
Gross profit	$458,345,750.49	$89,759,864.29	$548,105,614.78	$24,858,454.33	$79,461,964.98
Total operating expense	411,709,546.25	73,043,676.17	484,753,222.42	20,446,579.60	55,059,120.37
Net operating profit	$46,636,204.24	$16,716,188.12	$63,352,392.36	$4,411,874.73	$24,402,844.61
Other income	4,570,667.66	3,244,631.06	7,815,298.72	816,900.97	3,576,045.75
Deductions from income	20,292,060.19	6,156,542.20	26,448,602.39	1,772,526.26	5,949,960.79
Net profit	$30,914,811.71	$13,804,276.98	$44,719,088.69	$3,456,249.44	$22,028,909.57
Number of concerns	4	189	193	274	213

Number of Head Slaughtered

	Slaughterers					Miscellaneous			
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	To all pac
Species:	Big four	Other	Total						
Cattle	6,301,226	2,164,890	8,466,116	865,051	9,331,167	342,574	55,332	397,906	9,729
Calves	3,278,747	1,132,614	4,411,361	423,621	4,834,982	83,902	102,544	186,446	5,021
Hogs	22,893,208	22,284,052	45,177,260	3,702,730	48,879,990	685,412	228,207	913,619	49,793
Sheep	11,642,535	1,741,969	13,384,504	1,229,615	14,614,119	95,208	51,082	146,290	14,760
Total	44,115,716	27,323,525	71,439,241	6,221,017	77,660,258	1,207,096	437,165	1,644,261	79,304
Number of concerns	4	189	193	274	467	171	42	213	680

*This number includes 1,528,316 head slaughtered for the account of other concerns. Excludes 58,397 horses.

Gov. Ex. 8

Packers' Condensed Statement of Operations, Year 1928

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	Total all packers
ic	$2,222,698,206.73	$969,217,302.72	$3,191,915,509.45	$222,037,082.79	$415,866,251.69	$3,829,818,843.93
	107,053,301.25	34,319,274.22	141,372,575.47	.....	16,252,786.84	157,625,362.31
sales of foreign slaughter	110,442,609.29	.....	110,442,609.29	.....	.....	110,442,609.29
Total	$2,440,194,117.27	$1,003,536,576.94	$3,443,730,694.21	$222,037,082.79	$432,119,038.53	$4,097,886,815.53
	1,981,848,366.78	913,776,712.65	2,895,625,079.43	197,178,628.46	352,657,073.55	3,445,460,781.44
	$458,345,750.49	$89,759,864.29	$548,105,614.78	$24,858,454.33	$79,461,964.98	$652,426,034.09
ting expense	411,709,546.25	73,043,676.17	484,753,222.42	20,448,579.60	55,059,120.37	560,258,922.39
g profit	$46,636,204.24	$16,716,188.12	$63,352,392.36	$4,411,874.73	$24,402,844.61	$92,167,111.70
e	4,570,667.66	3,244,631.06	7,815,298.72	816,900.97	3,576,045.75	12,208,245.44
from income	20,292,060.19	6,156,542.20	26,448,602.39	1,772,526.26	5,949,980.79	34,171,109.44
Net profit	$30,914,811.71	$13,804,276.98	$44,719,088.69	$3,456,249.44	$22,028,909.57	$70,204,247.70
concerns	4	189	193	274	213	680

Number of Head Slaughtered

	Slaughterers					Miscellaneous				
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all packers	Per cent of big four to all packers
	Big four	Other	Total							
	6,301,226	2,164,890	8,466,116	865,051	9,331,167	342,574	55,332	397,906	9,729,073	64.77
	3,278,747	1,132,614	4,411,361	423,621	4,834,982	83,902	102,544	186,446	5,021,428	65.30
	22,893,208	22,284,052	45,177,260	3,702,730	48,879,990	685,412	228,207	913,619	49,793,609	45.98
	11,642,535	1,741,969	13,384,504	1,229,615	14,614,119	95,208	51,082	146,290	14,760,409	78.88
Total	44,115,716	27,323,525	71,439,241	6,221,017	77,660,258	1,207,096	437,165	1,644,261	79,304,519*	55.63
concerns	4	189	193	274	467	171	42	213	680	

*umber includes 1,528,316 head slaughtered for the account of other concerns. Excludes 58,397 horses.

[fol. 1603]

Gov. Ex. 9

Packers Condensed Statement of Operations Year 1927

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	
Net Sales:						
Domestic	$2,110,202,343.31	$925,683,010.84	$3,035,885,354.15	$177,778,238.59	$363,548,997.27	$
Export	107,627,498.07	35,509,215.04	143,136,713.11	.....	13,539,893.76	
Foreign Sales of Foreign Slaughter	134,107,058.58	.....	134,107,058.58	.....	.....	
Total	$2,351,936,899.96	$961,192,225.88	$3,313,129,125.84	$177,778,238.59	$377,088,891.03	$
Cost of sales	1,920,441,059.87	822,976,039.59	2,743,417,099.46	145,487,973.45	293,997,813.57	
Gross profit	$431,495,840.09	$138,216,186.29	$569,712,026.38	$32,290,265.14	$83,091,077.46	
Total operating expense	399,762,557.78	136,556,921.96	536,319,479.74	28,998,883.57	61,587,509.57	
Net operating profit	$31,733,282.31	$1,659,264.33	$33,392,546.64	$3,291,381.57	$21,503,567.89	
Other income	2,979,808.32	2,938,608.25	5,918,416.57	474,139.30	3,232,542.96	
Deductions from income	18,413,487.82	5,113,588.78	23,527,076.60	754,603.11	5,234,606.79	
Net profit	$16,299,602.81	515,716.20†	$15,783,886.61	$3,010,917.76	$19,501,504.06	
Number of concerns	4	187	191	215	205	

Number of Head Slaughtered

	Slaughterers					Miscellaneous			
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all pack
	Big four	Other	Total						
Species:									
Cattle	7,294,760	2,262,751	9,557,511	751,284	10,308,795	249,871	62,267	312,138	10,620,9
Calves	3,333,585	1,141,812	4,475,397	432,319	4,907,716	20,459	86,592	107,051	5,014,7
Hogs	21,306,837	19,500,534	40,807,371	2,494,094	43,301,465	858,323	331,951	1,190,274	44,491,7
Sheep	11,228,991	1,771,046	13,000,037	879,562	13,879,599	20,138	32,570	52,708	13,932,3
Total	43,164,173	24,676,143	67,840,316	4,557,259	72,397,575	1,148,791	513,380	1,662,171	74,059,7
Number of concerns	4	187	191	215	406	162	43	205	611

*This number includes 1,718,535 head slaughtered for the account of other concerns. Excludes 36,314 horses.
†Red in copy.

Gov. Ex. 9

Packers Condensed Statement of Operations Year 1927

	Big four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	Total all packers
.....	$2,110,202,343.31	$925,683,010.84	$3,035,885,354.15	$177,778,238.59	$363,548,997.27	$3,577,212,590.01
.....	107,627,498.07	35,509,215.04	143,136,713.11	.....	13,539,893.76	156,676,606.87
Sales of Foreign Slaughter	134,107,058.58	.....	134,107,058.58	.....	.....	134,107,058.58
otal	$2,351,936,899.96	$961,192,225.88	$3,313,129,125.84	$177,778,238.59	$377,088,891.03	$3,867,996,255.46
.....	1,920,441,059.87	822,976,039.59	2,743,417,099.46	145,487,973.45	293,997,813.57	3,182,902,886.48
.....	$431,495,840.09	$138,216,186.29	$569,712,026.38	$32,290,265.14	$83,091,077.46	$685,093,368.98
ng expense	399,762,557.78	136,556,921.96	536,319,479.74	28,998,883.57	61,587,509.57	626,905,872.88
g profit	$31,733,282.31	$1,659,264.33	$33,392,546.64	$3,291,381.57	$21,503,567.89	$58,187,496.10
.....	2,979,808.32	2,938,608.25	5,918,416.57	474,139.30	3,232,542.96	9,625,098.83
rom income	18,413,487.82	5,113,588.78	23,527,076.60	754,603.11	5,234,606.79	29,516,286.50
et profit	$16,299,602.81	515,716.20†	$15,783,886.61	$3,010,917.76	$19,501,504.06	$38,296,308.43
oncerns	4	187	191	215	205	611

Number of Head Slaughtered

	Slaughterers					Miscellaneous				
	Federally inspected			Non-federally inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all packers	Per cent of big four to all packers
	Big four	Other	Total							
.....	7,294,760	2,262,751	9,557,511	751,284	10,308,795	249,871	62,267	312,138	10,620,933	68.68
.....	3,333,535	1,141,812	4,475,397	432,319	4,907,716	20,459	86,592	107,051	5,014,767	66.48
.....	21,306,837	19,500,534	40,807,371	2,494,094	43,301,465	858,323	331,951	1,190,274	44,491,739	47.89
.....	11,228,991	1,771,046	13,000,037	879,562	13,879,599	20,138	32,570	52,708	13,932,307	80.60
otal	43,164,173	24,676,143	67,840,316	4,557,259	72,397,575	1,148,791	513,380	1,662,171	74,059,746*	58.28
oncerns	4	187	191	215	406	162	43	205	611	

imber includes 1,718,535 head slaughtered for the account of other concerns. Excludes 36,314 horses.
copy.

[fol. 1604]

Gov. Ex. 10

Packers Condensed Statement of Operations Year 1926

	Big Four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers
Net Sales:					
Domestic	$1,935,687,507.78(a)	$1,009,883,343.51	$2,945,570,851.29	$178,166,766.47	$332,770,383.48
Export	104,466,716.16	79,823,595.56	184,290,311.72	.....	14,106,065.43
Foreign sales of foreign slaughter	94,964,260.00	.....	94,964,260.00	.....	.....
Total	$2,135,118,483.94	$1,089,706,939.07	$3,224,825,423.01	$178,166,766.47	$346,876,448.91
Cost of sales	1,760,908,544.01	927,009,560.91	2,687,918,104.92	149,146,921.41	270,814,782.44
Gross profit	$374,209,939.93	$162,697,378.16	$536,907,318.09	$29,019,845.06	$76,061,666.47
Total operating expense	323,907,455.69	149,884,500.84	473,791,956.53	26,550,068.73	56,489,267.48
Net operating profit	$50,302,484.24	$12,812,877.32	$63,115,361.56	$2,469,776.33	$19,572,398.99
Other income	2,404,656.69	3,049,245.62	5,453,902.31	463,180.25	3,186,979.53
Deductions from income	21,690,789.21	6,016,757.50	27,707,546.71	927,783.11	6,597,491.00
Net profit	$31,016,351.72(a)	$9,845,365.44	$40,861,717.16	$2,005,173.47	$16,161,887.52
Number of concerns	4	194	198	185	197

Number of Head Slaughtered

	Slaughterers					Miscellaneous			
	Federally inspected			Non-federally Inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all pac
	Big Four	Other	Total						
Species:									
Cattle	6,619,112	2,682,975	9,302,087	773,762	10,075,849	149,659	39,738	189,397	10,265
Calves	3,080,634	1,226,754	4,307,388	393,313	4,700,701	179,619	16,328	195,947	4,896
Hogs	16,787,716	19,737,971	36,525,687	2,200,091	38,725,778	466,192	220,742	686,934	39,412
Sheep	9,952,070	1,817,933	11,770,003	996,736	12,766,739	144,414	87,205	231,619	12,998
Horses	.....	.....	.....	.....	.....	23,489	.....	23,489	23
Total	36,439,532	25,465,633	61,905,165	4,363,902	66,269,067	963,373	364,013	1,327,386	67,596
Number of concerns	4	194	198	185	383	168	29	197	58

(a) Change of fiscal year by two companies resulted in reports being filed covering only eight and ten months respectively.
(b) This number includes 1,675,560 head slaughtered for the account of other concerns.

Gov. Ex. 10

Packers Condensed Statement of Operations Year 1926

	Big Four federally inspected	Other federally inspected slaughterers	Total federally inspected slaughterers	Non-federally inspected slaughterers	Miscellaneous, including non-slaughterers	Total all packers
stic	$1,935,687,507.78(a)	$1,009,883,343.51	$2,945,570,851.29	$178,166,766.47	$332,770,383.48	$3,456,508,001.24
t	104,466,716.16	79,823,595.56	184,290,311.72	.....	14,106,065.43	198,396,377.15
n sales of foreign slaughter	94,964,260.00	.....	94,964,260.00	.....	.....	94,964,260.00
Total	$2,135,118,483.94	$1,089,706,939.07	$3,224,825,423.01	$178,166,766.47	$346,876,448.91	$3,749,868,638.39
es	1,760,908,544.01	927,009,560.91	2,687,918,104.92	149,146,921.41	270,814,782.44	3,107,879,808.77
t	$374,209,939.93	$162,697,378.16	$536,907,318.09	$29,019,845.06	$76,061,666.47	$641,988,829.62
ating expense	323,907,455.69	149,884,500.84	473,791,956.53	26,550,068.73	56,489,267.48	556,831,292.74
ing profit	$50,302,484.24	$12,812,877.32	$63,115,361.56	$2,469,776.33	$19,572,398.99	$85,157,536.88
me	2,404,656.69	3,049,245.62	5,453,902.31	463,180.25	3,186,979.53	9,104,062.09
from income	21,690,789.21	6,016,757.50	27,707,546.71	927,783.11	6,597,491.00	35,232,820.82
Net profit	$31,016,351.72(a)	$9,845,365.44	$40,861,717.16	$2,005,173.47	$16,161,887.52	$59,028,778.15
concerns	4	194	198	185	197	580

Number of Head Slaughtered

	Slaughterers					Miscellaneous				
	Federally inspected			Non-federally Inspected	Total	Federally inspected	Non-fed. inspected	Total	Total all packers	Per cent of Big Four to all packers
	Big Four	Other	Total							
	6,619,112	2,682,975	9,302,087	773,762	10,075,849	149,650	39,738	189,397	10,265,246	64.48
	3,080,634	1,226,754	4,307,388	393,313	4,700,701	179,619	16,328	195,947	4,896,648	62.91
	16,787,716	19,737,971	36,525,687	2,200,091	38,725,778	466,192	220,742	686,934	39,412,712	42.59
	9,952,070	1,817,933	11,770,003	996,736	12,766,739	144,414	87,205	231,619	12,998,358	76.56
	.....	.....	.....	.....	.....	23,489	.....	23,489	23,489	.....
Total	36,439,532	25,465,633	61,905,165	4,363,902	66,269,067	963,373	364,013	1,327,386	67,596,453(b)	53.91
concerns	4	194	198	185	383	168	29	197	580	

hange of fiscal year by two companies resulted in reports being filed covering only eight and ten months respectively.
his number includes 1,675,560 head slaughtered for the account of other concerns.

[fol. 1605]

Gov. Ex. 11

Packers' Condensed Statement of Operations, Year 1925

	Big Four Federally inspected	Other Federally inspected	Total Federally inspected	Non-Federally inspected
Net sales:				
Domestic	$2,037,765,499.22	$1,280,256,119.45	$3,318,021,618.67	$149,664,029.96
Export	137,738,056.10	63,329,824.20	201,067,880.30	39,455.20
Foreign sales of foreign slaughter	139,195,489.70	.....	139,195,489.70	.....
Total	$2,314,699,045.02	$1,343,585,943.65	$3,658,284,988.67	$149,703,485.16
Cost of sales	1,867,787,573.32	1,123,610,539.37	2,991,398,112.69	123,847,571.37
Gross profit	$446,911,471.70	$219,975,404.28	$666,886,875.98	$25,855,913.79
Total operating expense	389,749,690.52	185,633,020.25	575,382,710.77	23,338,285.76
Net operating profit	$57,161,781.18	$34,342,384.03	$91,504,165.21	2,517,628.03
Other income	2,760,327.10	5,226,223.76	7,986,550.86	553,269.68
Other deductions	26,044,657.24	11,143,349.64	37,188,006.88	815,359.85
Net profit	$33,877,451.04	$28,425,258.15	$62,302,709.19	$2,255,537.86
Number of concerns	4	352	356	158

Statement of Number of Head Slaughtered

	Federally inspected			Non-Federally inspected	Total all packers	Per cent of Big Four to all packers
	Big Four	Other	Total			
Species:						
Cattle	7,176,670	2,322,734	9,499,404	581,081	10,080,485	71.19
Calves	3,560,949	1,288,648	4,849,597	325,976	5,175,573	68.80
Hogs	21,267,330	21,662,537	42,929,867	1,922,162	44,852,029	47.42
Sheep	9,735,604	2,131,654	11,867,258	802,094	12,669,352	76.84
Total	41,740,553	27,405,573	69,146,126	3,631,313	72,777,439#	57.35
Number of concerns	4	352	356	158	514	

This number includes 1,537,744 custom basis. Excludes 35,
4 "Big Four"—Federally inspe
194 Federal—Inspected Slaughte
141 Non-Federal—Inspected Sla
158 Federally Inspected Non-Sla
17 Non-Federally Inspected No
514

[fol. 1606]

Gov. Ex. 12

Packers' Summary of 525 Packers Condensed Statement of Operations, Year 1924

	Big Four Federally inspected	Other Federally inspected	Total Federally inspected	Non-Federally inspected
Net sales:				
Domestic	$1,796,246,254.21	$858,600,314.41	$2,654,846,568.62	$346,910,194.56
Export	139,212,586.26	48,590,392.27	187,802,978.53	.....
Foreign sales of foreign slaughter	123,488,760.68	.....	123,488,760.68	.....
Total	$2,058,947,601.15	$907,190,706.68	$2,966,138,307.83	$346,910,194.56
Cost of sales	1,598,648,001.07	730,470,086.14	2,329,118,087.21	268,605,182.77
Gross profit	$460,299,600.08	$176,720,620.54	$637,020,220.62	$78,305,011.79
Total operating expense	397,935,827.92	148,247,296.33	546,183,124.25	63,609,683.96
Net operating profit	$62,363,772.16	$28,473,324.21	$90,837,096.37	$14,695,327.83
Other income	3,111,019.14	3,415,677.58	6,526,696.72	2,388,872.12
Deductions from income	24,684,575.77	8,210,335.06	32,894,910.83	4,664,735.87
Net profit	$40,790,215.27	$23,678,666.73	$64,468,882.26	$12,419,464.08
Number of companies	4	215	219	306

Slaughter statistics not available for year 1924.

Gov. Ex. 11.

Packers' Condensed Statement of Operations, Year 1925

	Big Four Federally inspected	Other Federally inspected	Total Federally inspected	Non-Federally inspected	Total all packers
	$2,037,765,499.22	$1,280,256,119.45	$3,318,021,618.67	$149,664,029.96	$3,467,685,648.63
	137,738,056.10	63,329,824.20	201,067,880.30	39,455.20	201,107,335.50
of foreign slaughter	139,195,489.70	.....	139,195,489.70	.....	139,195,489.70
	$2,314,699,045.02	$1,343,585,943.65	$3,658,284,988.67	$149,703,485.16	$3,807,988,473.83
	1,867,787,573.32	1,123,610,539.37	2,991,398,112.69	123,847,571.37	3,115,245,684.06
	$446,911,471.70	$219,975,404.28	$666,886,875.98	$25,855,913.79	$692,742,789.77
xpense	389,749,690.52	185,633,020.25	575,382,710.77	23,338,285.76	598,720,996.53
fit	$57,161,781.18	$34,342,384.03	$91,504,165.21	2,517,628.03	$94,021,793.24
	2,760,327.10	5,226,223.76	7,986,550.86	553,269.68	8,539,820.54
	26,044,657.24	11,143,349.64	37,188,006.88	815,359.85	38,003,366.73
	$33,877,451.04	$28,425,258.15	$62,302,709.19	$2,255,537.86	$64,558,247.05
ns	4	352	356	158	514

Statement of Number of Head Slaughtered

	Federally inspected			Non-Federally inspected	Total all packers	Per cent of Big Four to all packers
	Big Four	Other	Total			
	7,176,670	2,322,734	9,499,404	581,081	10,080,485	71.19
	3,560,949	1,288,648	4,849,597	325,976	5,175,573	68.80
	21,267,330	21,662,537	42,929,867	1,922,162	44,852,029	47.42
	9,735,604	2,131,654	11,867,258	802,094	12,669,352	76.84
	41,740,553	27,405,573	69,146,126	3,631,313	72,777,439*	57.35
ns	4	352	356	158	514	

*This number includes 1,537,744 head slaughtered on a custom basis. Excludes 35,000 horses.

4 "Big Four"—Federally inspected.
194 Federal—Inspected Slaughterers.
141 Non-Federal—Inspected Slaughterers.
158 Federally Inspected Non-Slaughterers.
17 Non-Federally Inspected Non-Slaughterers.
514

Gov. Ex. 12

Packers' Summary of 525 Packers Condensed Statement of Operations, Year 1924

	Big Four Federally inspected	Other Federally inspected	Total Federally inspected	Non-Federally inspected	Total all packers
	$1,796,246,254.21	$858,600,314.41	$2,654,846,568.62	$346,910,194.56	$3,001,756,763.18
	139,212,586.26	48,590,392.27	187,802,978.53	.....	187,802,978.53
f foreign slaughter	123,488,760.68	.....	123,488,760.68	.....	123,488,760.68
	$2,058,947,601.15	$907,190,706.68	$2,966,138,307.83	$346,910,194.56	$3,313,048,502.39
	1,598,648,001.07	730,470,086.14	2,329,118,087.21	268,605,182.77	2,597,723,269.98
	$460,299,600.08	$176,720,620.54	$637,020,220.62	$78,305,011.79	$715,325,232.41
pense	397,935,827.92	148,247,296.33	546,183,124.25	63,609,683.96	609,792,808.21
t	$62,363,772.16	$28,473,324.21	$90,837,096.37	$14,695,327.83	$105,532,424.20
come	3,111,019.14	3,415,677.58	6,526,696.72	2,388,872.12	8,915,568.84
	24,584,575.77	8,210,335.06	32,894,910.83	4,664,735.87	37,559,646.70
	$40,790,215.27	$23,678,666.73	$64,468,882.26	$12,419,464.08	$76,888,346.34
ies	4	215	219	306	525

stics not available for year 1924.

[fol. 1607]

Gov. Ex. 13.

Packers' Big Four Condensed Statement of Operations, 1929

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$262,621,665.00	$267,960,185.18	$947,663,000.00	$860,782,113.00	$2,339,026,963.18
Export	16,588,688.00	.....	30,117,375.00	31,550,904.44	78,256,967.44
Foreign from foreign slaughter	29,595,103.00	.....	.....	111,863,421.56	141,458,524.56
Total	$308,805,456.00	$267,960,185.18	$977,780,375.00	$1,004,196,439.00	$2,558,742,455.18
Cost of sales	260,492,942.69	261,912,339.20	830,137,699.44	822,943,130.88	2,175,486,112.21
Gross profit	$48,312,513.31	$6,047,845.98	$147,642,675.56	$181,253,308.12	$383,256,342.97
Total operating expense	44,040,692.08	1,169,668.37	133,388,920.00	160,509,715.06	339,108,995.51
Net operating profit	$4,271,821.2	$4,878,177.61	$14,253,755.56	$20,743,593.06	$44,147,347.46
Additions to income	.....	281,779.49	4,183,497.13	.....	4,465,276.62
Deductions from income	1,967,228.74	2,406,106.51	5,360,437.49	10,933,074.59	20,666,847.33
Net profit	$2,304,592.49	$2,753,850.59	$13,076,815.20	$9,810,518.47	$27,945,776.75

[fol. 1608]

Gov. Ex. 14

Packers' Big Four Condensed Statement of Operations, 1928

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$248,207,624.00	$251,156,371.68	$890,611,000.00	$832,723,211.05	$2,222,698,206.73
Export	47,536,824.00	.....	29,882,900.00	29,633,577.25	107,053,301.25
Foreign from foreign slaughter	.....	.....	.....	110,442,609.29	110,442,609.29
Total	$295,744,448.00	$251,156,371.68	$920,493,900.00	$972,799,397.59	$2,440,194,117.27
Cost of sales	249,367,196.76	164,909,022.44	778,119,015.23	789,453,132.35	1,981,848,366.78
Gross profit	$46,377,251.24	$86,247,349.24	$142,374,884.77	$183,346,265.24	$458,345,750.49
Total operating expense	42,255,989.71	81,418,025.55	126,746,173.00	161,289,357.99	411,709,546.25
Net operating profit	$4,121,261.53	$4,829,323.69	$15,628,711.77	$22,056,907.25	$46,636,204.24
Additions to income	.....	100,127.36	4,470,540.30	.....	4,570,667.66
Deductions from income	1,913,384.75	2,362,123.49	5,286,070.27	10,730,481.68	20,292,060.19
Net profit	$2,207,876.78	$2,567,327.56	$14,813,181.80	$11,326,425.57	$30,914,811.71

[fol. 1609]

Gov. Ex. 15

Packers Big Four Condensed Statement of Operations, 1927

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$236,784,760.25	$208,436,871.46	$847,945,000.00	$817,635,711.60	$2,110,202,343.31
Export	21,003,254.50	12,932,927.60	37,628,200.00	36,063,115.07	107,627,498.07
Foreign from foreign slaughter	26,073,617.31	.....	.....	108,033,441.27	134,107,058.58
Total	$283,861,632.06	$221,369,799.06	$885,573,200.00	$961,132,268.84	$2,351,936,899.96
Cost of sales	238,169,927.16	151,109,054.05	748,216,687.08	782,945,391.58	1,920,441,059.87
Gross profit	$45,691,704.90	$70,260,745.01	$137,356,512.92	$178,186,877.26	$431,495,840.09
Total operating expense	43,608,836.26	65,912,692.18	123,873,067.00	166,367,962.34	399,762,557.78
Net operating profit	$2,082,868.64	$4,348,052.83	$13,483,445.92	$11,818,914.92	$31,733,282.31
Additions to Income	74,265.51	102,289.72	2,803,253.09	.....	2,979,808.32
Deductions from Income	2,009,737.40	2,096,383.55	3,026,627.04	11,280,739.83	18,413,487.82
Net profit	$147,396.75	$2,353,959.00	$13,260,071.97	$538,175.09	$16,299,602.81

[fol. 1610]

Gov. Ex. 16

Packers Big Four Condensed Statement of Operations, 1926

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$185,961,250.71	$205,097,122.68	$862,895,000.00	$681,734,134.39	$1,935,687,507.78
Export	7,527,082.00	14,666,542.16	43,142,400.00	39,130,692.00	104,466,716.16
Foreign from foreign slaughter	7,180,875.00	.....	.....	87,783,385.00	94,964,260.00
Total	$200,669,207.71	$219,763,664.84	$906,037,400.00	$808,648,211.39	$2,135,118,483.94
Cost of sales	167,083,699.39	177,643,287.68	764,964,676.81	651,216,880.13	1,760,908,544.01
Gross profit	$33,585,508.32	$42,120,377.16	$141,072,723.19	$157,431,331.26	$374,209,939.93
Total operating expense	28,966,557.70	35,705,209.57	119,738,242.00	139,497,446.42	323,907,455.69
Net operating profit	$4,618,950.62	$6,415,167.59	$21,334,481.19	$17,933,884.84	$50,302,484.24
Additions to income	66,199.29	110,746.46	2,227,710.94	.....	2,404,656.69
Deductions from income	1,515,391.02	2,473,133.57	7,916,949.87	9,785,314.75	21,690,789.21
Net profit	$3,169,758.89	$4,052,780.48	$15,645,242.26	$8,148,570.09	$31,016,351.72

Note: Change of fiscal year by Wilson and Armour resulted in filing reports for only 8 and 10 months respectively.

[fol. 1611]

Gov. Ex. 17

Packers Big Four Condensed Statement of Operations, 1925

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$224,787,720.74	$207,191,905.80	$797,102,000.00	$808,683,872.68	$2,037,765,499.22
Export	18,743,696.34	16,568,010.53	51,462,000.00	50,964,349.23	137,738,056.10
Foreign from foreign slaughter	28,455,658.47	.....	.....	110,739,831.23	139,195,489.70
Total	$271,987,075.55	$223,759,916.33	$848,564,000.00	$970,388,053.14	$2,314,699,045.02
Cost of sales	227,849,776.28	145,518,746.15	711,627,224.03	782,791,826.86	1,867,787,573.32
Gross profit	$44,137,299.27	$78,241,170.18	$136,936,775.97	$187,596,226.28	$446,911,471.70
Total operating expense	40,762,888.04	73,339,240.24	115,068,241.74	160,579,320.50	389,749,690.52
Net operating profit	$3,374,411.23	$4,901,929.94	$21,868,534.23	$27,016,905.78	$57,161,781.18
Additions to income	.....	200,363.42	2,559,963.68	.....	2,760,327.10
Deductions from income	2,120,279.52	2,309,935.64	9,049,345.87	12,565,096.21	26,044,657.24
Net profit	$1,254,131.71	$2,792,357.72	$15,379,152.04	$14,451,809.57	$33,877,451.04

[fol. 1612]

Gov. Ex. 18

Packers Big Four Condensed Statement of Operations, 1924

	Wilson & Co., Inc.	Cudahy Packing Co.	Swift & Co.	Armour & Co.	Total
Net sales:					
Domestic	$189,000,000.00	$186,210,243.98	$694,154,000.00	$726,882,010.23	$1,796,246,254.21
Export	21,000,000.00	16,804,757.94	51,370,000.00	50,037,828.32	139,212,586.26
Foreign from foreign slaughter	25,000,000.00	.....	.....	98,488,760.68	123,488,760.68
Total	$235,000,000.00	$203,015,001.92	$745,524,000.00	$875,408,599.23	$2,058,947,601.15
Cost of sales	186,581,678.89	125,017,622.55	612,909,055.66	674,139,643.97	1,598,648,001.07
Gross profit	$48,418,321.11	$77,997,379.37	$132,614,944.34	$201,268,955.26	$460,299,600.08
Total operating expense	41,089,740.42	72,665,841.99	114,014,211.52	170,166,033.99	397,935,827.92
Net operating profit	$7,328,580.69	$5,331,537.38	$18,600,732.82	$31,102,921.27	$62,363,772.16
Additions to income	.....	654,966.99	2,456,052.15	.....	3,111,019.14
Deductions from income	2,326,321.02	2,634,274.44	6,930,797.23	12,793,183.08	24,684,575.77
Net profit	$5,002,259.67	$3,352,229.93	$14,125,987.74	$18,309,738.19	$40,790,215.53

[fol. 1613]

Gov. Ex. 19

Packers' Statement Showing Per Cent of Net Sales of Big Four to Totals of Federall
Slaughterers, and Packers and Stockyards Total, Years 1928 a

	1929				
Big Four:	No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division
Swift & Co	1	$977,780,375.00	28.61	26.38	22.66
Armour & Co. (& Morris)	1	892,333,017.44	26.11	24.08	20.67
Wilson & Co., Inc	1	279,210,353.00	8.17	7.53	6.47
Cudahy Packing Co	1	267,960,185.18	7.84	7.23	6.21
Total (Excluding Foreign Slaughter)	4	$2,417,283,930.62	70.73	65.22	56.01
Total Other Fed. Insp'd. Slaughterers	211	1,000,289,581.69	29.27	26.99	23.18
Total Fed. Insp'd. Slaughterers	215	$3,417,573,512.31	100.00	.....	.....
Total Non-Fed. Insp'd. Slaughterers	372	288,793,394.68	.....	7.79	6.69
Total Slaughterers	587	$3,706,366,906.99	.....	100.00	.....
Total Non-Slaughterers	245	447,065,886.96	.....	.....	10.36
Total Not Included	166	162,496,307.67	.....	.....	3.76
Total Per Packers & Stockyards Division	998	$4,315,929,101.62	.....	.....	100.00

[fol. 1614]

Gov. Ex. 20

Packers' Statement Showing Per Cent of Net Sales of Big Four to Totals of Federa
Slaughterers, and Total of All Included in Tabulation, Years 192

	1927					1926		
Big Four:	No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division	No. of concerns	Amount	% of bi four to t federall inspect
Swift & Co	1	$885,573,200.00	27.86	26.38	23.72	1	$906,037,400.60	28.9
Armour & Co. (& Morris)	1	853,098,827.57	26.83	25.41	22.85	1	720,864,826.39*	23.0
Wilson & Co., Inc	1	257,788,014.75	8.11	7.68	6.90	1	193,488,332.71*	6.1
Cudahy Packing Co	1	221,369,799.06	6.96	6.60	5.93	1	219,763,664.84	7.0
Total (Excluding Foreign Slaughter)	4	$2,217,829,841.38	69.76	66.07	59.40	4	$2,040,154,223.94	65.1
Total Other Fed. Insp'd. Slaughterers	187	961,192,225.88	30.24	28.63	25.74	194	1,089,706,939.07	34.8
Total Federally Insp'd. Slaughterers	191	$3,179,022,067.26	100.00	.....	.....	198	$3,129,861,163.01	100.0
Total Non-Fed. Insp'd. Slaughterers	215	177,778,238.59	.....	5.30	4.76	185	178,166,766.47	.....
Total Slaughterers	406	$3,356,800,305.85	.....	100.00	.....	383	$3,308,027,929.48	.....
Total Non-Slaughterers	205	377,088,891.03	.....	.....	10.10	197	346,876,448.91	.....
Number Packer Reports Not Included	171	(Amount Unknown)	.....	.....	.....	230	(Amount Unknown)	.....
Total of Reports Tabulated	611	$3,733,889,196.88	.....	.....	100.00	580	$3,654,904,378.39	.....

* Change

Gov. Ex. 19

ement Showing Per Cent of Net Sales of Big Four to Totals of Federally Inspected Slaughterers, Total Slaughterers, and Packers and Stockyards Total, Years 1928 and 1929

1929					1928				
No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division	No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division
1	$977,780,375.00	28.61	26.38	22.66	1	$920,493,900.00	27.61	25.89	22.23
1	892,333,017.44	26.11	24.08	20.67	1	862,356,788.30	25.87	24.26	20.82
1	279,210,353.00	8.17	7.53	6.47	1	295,744,448.00	8.87	8.32	7.14
1	267,960,185.18	7.84	7.23	6.21	1	251,156,371.68	7.54	7.06	6.07
4	$2,417,283,930.62	70.73	65.22	56.01	4	$2,329,751,507.98	69.89	65.53	56.26
211	1,000,289,581.69	29.27	26.99	23.18	189	1,003,536,576.94	30.11	28.23	24.23
215	$3,417,573,512.31	100.00	.....	.....	193	$3,333,288,084.92	100.00	.....	.....
372	288,793,394.68	.....	7.79	6.69	274	222,037,082.79	.....	6.24	5.36
587	$3,706,366,906.99	.....	100.00	.....	467	$3,555,325,167.71	.....	100.00	.....
245	447,065,886.96	.....	.....	10.36	213	432,119,038.53	.....	.....	10.43
166	162,496,307.67	.....	.....	3.76	72	154,000,000.00*	.....	.....	3.72
998	$4,315,929,101.62	.....	.....	100.00	752	$4,141,444,206.24	.....	.....	100.00

* Added by estimate.

Gov. Ex. 20

rs' Statement Showing Per Cent of Net Sales of Big Four to Totals of Federally Inspected Slaughterers, Total Slaughterers, and Total of All Included in Tabulation, Years 1925, 1926, and 1927

27			1926					1925			
f big o total rally ected	% of big four to total slaughterers	% of big four to P. & S. division	No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division	No. of concerns	Amount	% of big four to total federally inspected	% of big four to total slaughterers	% of big four to P. & S. division
.86	26.38	23.72	1	$906,037,400.00	28.95	27.39	24.79	1	$848,564,000.00	26.58	25.51	23.13
.83	25.41	22.85	1	720,864,826.39*	23.03	21.79	19.72	1	859,648,221.91	26.93	25.85	23.43
.11	7.68	6.90	1	193,488,332.71*	6.18	5.85	5.29	1	243,531,417.08	7.63	7.32	6.64
.96	6.60	5.93	1	219,763,664.84	7.02	6.64	6.01	1	223,759,916.33	7.01	6.73	6.10
.76	66.07	59.40	4	$2,040,154,223.94	65.18	61.67	55.81	4	$2,175,503,555.32	68.15	65.41	59.30
.24	28.63	25.74	194	1,089,706,939.07	34.82	32.94	29.82	194	1,016,556,987.56	31.85	30.57	27.71
.00	.....	.....	198	$3,129,861,163.01	100.00	.....	.....	198	$3,192,060,542.88	100.00	.....	.....
...	5.30	4.76	185	178,166,766.47	.....	5.39	4.88	141	133,726,320.82	.....	4.02	3.64
..	100.00	.....	383	$3,308,027,929.48	.....	100.00	.....	339	$3,325,786,863.70	.....	100.00	.....
..	.....	10.10	197	346,876,448.91	.....	.....	9.49	175	343,006,120.43	.....	.....	9.35
..	.....	.....	230	(Amount Unknown)	.....	.....	.....	101	(Amount Unknown)	.....	.....	.....
..	.....	100.00	580	$3,654,904,378.39	.....	.....	100.00	514	$3,668,792,984.13	.....	.....	100.00

* Change of fiscal year by Armour and Wilson resulted in filing reports for only 10 and 8 months, respectively.

[fols. 1615 & 1616] NOTE FOR THE COURT

In connection with Government's Exhibits Nos. 21, 22, and 23, it was pointed out when they were introduced (R. 2582, 83) that columns headed "Net Profit" included foreign business from foreign slaughter, where such business was done, while columns headed "Net Sales" included only domestic and export business.

To correct this discrepancy, and in fulfilment of counsel's promise to the Court (R. 2629), the net sales with their respective percentages have been re-figured for each of the years in question, so as to include foreign business where the same is included in the "Profits" column.

For the Court's more convenient comparison, these figures have been attached as pasted inserts in each case alongside the column of figures for which they are substituted. The inserts are, of course, not part of the exhibits.

(Gov't Exhibits 21, 22, 23, 24, 25, 26, 27, 29, 30, and 31 follow, side folios 1617-1628)

[fols. 1617 & 1618]

Gov. Ex. 21

Packers' Statement Showing Comparison of Percentages of Sales and Profit of Big-Four Packers

	Net sales for 1929, including foreign business	Per cent of total	1929 Net sales	Per cent of total	Net profit	
Swift & Co	$977,780,375.00	27.47	$977,780,375.00	28.61	$13,076,815.20	
Armour & Co	1,004,196,439.00	28.21	892,333,017.44	26.11	9,810,518.47	(b)
Wilson & Co., Inc	308,805,456.00	8.68	279,210,353.00	8.17	2,304,592.49	(b)
Cudahy Packing Co	267,960,185.18	7.53	267,960,185.18	7.84	2,753,850.59	
Total Big-Four	$2,558,742,455.18	71.89	$2,417,283,930.62	70.73	$27,945,776.75	
Other Federally Inspected Slaughterers (211)	1,000,374,236.66	28.11	1,000,289,581.69	29.27	8,050,667.72	
Total Federally Inspected Slaughterers	$3,559,116,691.84	100.00	$3,417,573,512.3	(a) 100.00	$35,996,444.47	

(a) Foreign sales of foreign slaughter of $111,865,421.56 by Armour and $29,595,103.00 by W
cluded. None reported by others.
(b) Reports do not show segregation of profit, if any, from foreign operations.

[fols. 1619 & 1620]

Gov. Ex. 22

Packers' Statement Showing Comparison of Percentages of Sales and Profit of Big-Four Packers

	Net sales for 1927, including foreign business	Per cent of total	1927 Net sales	Per cent of total	Net profit	
Swift & Co	$885,573,200.00	26.73	$885,573,200.00	27.86	$13,260,071.97	
Armour & Co	961,132,268.84	29.02	853,098,827.57	26.83	538,175.09	(b)
Wilson & Co., Inc	283,861,632.06	8.56	257,788,014.75	8.11	147,396.75	(b)
Cudahy Packing Co	221,369,799.06	6.68	221,369,799.06	6.96	2,353,959.00	
Total Big-Four	$2,351,936,899.96	70.99	$2,217,829,841.38	69.76	$16,299,602.81	
Other Federally Inspected Slaughterers	961,192,225.88	29.01	(187) 961,192,225.88	30.24	*515,716.20	
Total Federally Inspected Slaughterers	$3,313,129,125.84	100.00	$3,179,022,067.26	(a) 100.00	$15,783,886.61	

(a) Foreign sales of foreign slaughter of $108,033,441.27 by Armour and $26,073,617.31 by W
cluded. None reported by others.
(b) Reports do not show segregation of profit, if any, from foreign operations.
* Red in copy.

[fol. 1621]

Gov. Ex. 23

Packers' Statement Showing Comparison of Percentages of Sales and Profit of Big-Four Packers to Totals of Federally Inspected Slaughterers, Year 1925

	Net sales for 1925, including foreign business	Per cent of total	Net sales	Per cent of total	Net profit	Per cent of total	
Swift & Co	$848,564,000.00	23.20	$848,564,000.00	26.58	$15,379,152.04	34.49	Swift & Co
Armour & Co	970,388,053.14	26.53	859,648,221.91	26.93	14,451,809.57 (b)	32.41	Armour &
Wilson & Co., Inc	271,987,075.55	7.43	243,531,417.08	7.63	1,254,131.71 (b)	2.81	Wilson & C
Cudahy Packing Co	223,759,916.33	6.11	223,759,916.33	7.01	2,792,357.72	6.26	Cudahy Pa
Total Big-Four	$2,314,699,045.02	63.27	$2,175,503,555.32	68.15	$33,877,451.04	75.97	
Other Federally Inspected Slaughterers (194)	1,343,585,943.65	36.73	1,016,556,987.56	31.85	10,718,080.78	24.03	Other Fede
Total Federally Inspected Slaughterers	$3,658,284,988.67	100.00	$3,192,060,542.88	(a) 100.00	$44,595,531.82	100.00	Total Fede

(a) Foreign sales of foreign slaughter of $110,739,831.23 by Armour and $28,455,658.47 by Wilson ex-
cluded. None reported by others.
(b) Reports do not show segregation of profits, if any, from foreign operations.

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Gov. Ex. 21

and Profit of Big-Four Packers to Totals of Federally Inspected Slaughterers, Years 1928 and 1929

1929					1929			
Per cent of total	Net profit	Per cent of total	Net sales for 1929, including foreign business	Per cent of total	Net sales	Per cent of total	Net profit	Per cent of total
28.61	$13,076,815.20	36.33	$920,493,900.00	26.73	$920,493,900.00	27.61	$14,813,181.80	33.12
26.11	9,810,518.47 (b)	27.25	972,799,397.59	28.25	862,356,788.30	25.87	11,326,425.57 (b)	25.33
8.17	2,304,592.49 (b)	6.40	295,744,448.00	8.59	295,744,448.00	8.87	2,207,876.78	4.94
7.84	2,753,850.59	7.65	251,156,371.68	7.30	251,156,371.68	7.54	2,387,327.56	5.74
70.73	$27,945,776.75	77.63	$2,440,194,117.27	70.87	$2,329,751,507.98	69.89	$30,914,811.71	69.13
29.27	8,050,667.72	22.37	1,003,536,576.94	29.13	(189) 1,003,536,576.94	30.11	13,804,276.98	30.87
) 100.00	$35,996,444.47	100.00	$3,443,730,694.21	100.00	$3,333,288,084.92 (a)	100.00	$44,719,088.69	100.00

Armour and $29,595,103.00 by Wilson ex-

eign operations.

(a) Foreign sales of foreign slaughter of $110,442,609.29 by Armour excluded. None reported by others.
(b) Reports do not show segregation of profit, if any, from foreign operations.

Gov. Ex. 22

and Profit of Big-Four Packers to Totals of Federally Inspected Slaughterers, Years 1927 and 1926

1927					1926			
Per cent of total	Net profit	Per cent of total	Net sales for 1926, including foreign business	Per cent of total	Net sales	Per cent of total	Net profit	Per cent of total
27.86	$13,260,071.97	84.01	$906,037,400.00	28.10	$906,037,400.00	28.95	$15,645,242.26	38.29
26.83	538,175.09 (b)	3.41	808,648,211.39	25.09	720,864,826.39	23.03	8,148,570.09 (b)	19.94
8.11	147,396.75 (b)	.94	200,669,207.71	6.22	193,488,332.71	6.18	3,169,758.89 (b)	7.76
6.96	2,353,959.00	14.91	219,763,664.84	6.81	219,763,664.84	7.02	4,052,780.48	9.92
69.76	$16,299,602.81	103.27	$2,135,118,483.94	66.22	$2,040,154,223.94	65.18	$31,016,351.72	75.91
30.24	*515,716.20	*3.27	1,089,706,939.07	33.78	(194) 1,089,706,939.07	34.82	9,845,365.44	24.09
) 100.00	$15,783,886.61	100.00	$3,224,825,423.01	100.00	$3,129,861,163.01(a)	100.00	$40,861,717.16	100 00

Armour and $26,073,617.31 by Wilson ex-

eign operations.

(a) Foreign sales of foreign slaughter of $87,783,385.00 by Armour and $7,180,875.00 by Wilson excluded. None reported by others.
(b) Reports do not show segregation of profit, if any, from foreign operations.

NOTE: Change of fiscal year by Wilson and Armour resulted in filing reports for only 8 and 10 months respectively.

Gov. Ex. 23

Statement Showing Comparison of Percentages of Sales and Profit of Big-Four Packers to Totals of Federally Inspected Year

Per cent of total		Net sales for 1924, including foreign business	Per cent of total	Net sales	Per cent of total	Net profit	Per cent of total
34.49	Swift & Co.	$745,524,000.00	25.14	$745,524,000.00	26.23	$14,125,987.74	21.91
b) 32.41	Armour & Co.	875,408,599.23	29.51	776,919,838.55	27.33	18,309,738.19 (b)	28.40
b) 2.81	Wilson & Co., Inc.	235,000,000.00	7.92	210,000,000.00	7.39	5,002,259.67 (b)	7.76
6.26	Cudahy Packing Co.	203,015,001.92	6.85	203,015,001.92	7.14	3,352,229.93	5.20
75.97		$2,058,947,601.15	69.42	$1,935,458,840.47	68.09	$40,790,215.53	63.27
24.03	Other Federally Inspected Concerns (215)	907,190,706.68	30.58	907,190,706.68	31.91	23,678,666.73	36.73
100.00	Total Federally Inspected Concerns	$2,966,138,307.83	100.00	$2,842,649,547.15 (a)	100.00	$64,468,882.26	100.00

Wilson ex-

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(a) Foreign sales of foreign slaughter of $98,488,760.68 by Armour and $25,000,000.00 by Wilson excluded. None reported by others.
(b) Reports do not show segregation of profits, if any, from foreign operations.

[fol. 1622]

Gov. Ex. 24

Packers' Statement Showing Purchases of Livestock by 832 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year

Purchases at Posted Stockyards

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Tot
Swift & Co	1	1,870,200	23.10	1,351,549	32.52	6,248,363	19.85	4,814,275	36.50	14,284
Armour & Co. (& Morris)	1	2,251,112	27.81	1,097,761	26.41	4,808,469	15.27	3,761,583	28.52	11,918
Wilson & Co., Inc	1	569,857	7.04	199,616	4.80	962,088	3.06	845,933	6.41	2,577
Cudahy Packing Co	1	667,446	8.24	254,688	6.13	1,584,719	5.03	1,425,129	10.81	3,931
All other Packers	828	2,737,295	33.81	1,252,499	30.14	17,880,851	56.79	2,342,368	17.76	24,213
Total	832	8,095,910	100.00	4,156,113	100.00	31,484,490	100.00	13,189,288	100.00	56,925

Purchases from Sources Other Than Stockyards

Swift & Co	1	115,715	11.49	115,337	13.37	3,178,568	18.25	402,044	16.27	3,811
Armour & Co. (& Morris)	1	48,514	4.82	75,987	8.81	3,460,352	19.87	367,653	14.87	3,952
Wilson & Co., Inc	1	109,918	10.92	78,396	9.09	1,654,907	9.50	295,839	11.97	2,139
Cudahy Packing Co	1	43,301	4.30	86,888	10.07	1,361,059	7.81	241,972	9.79	1,733
All other Packers	828	689,467	68.47	506,125	58.66	7,764,484	44.57	1,164,245	47.10	10,124
Total	832	1,006,915	100.00	862,733	100.00	17,419,370	100.00	2,471,753	100.00	21,760

Purchases From All Sources

Swift & Co	1	1,985,915	21.82	1,466,886	29.23	9,426,931	19.28	5,216,319	33.31	18,096
Armour & Co. (& Morris)	1	2,299,626	25.26	1,173,748	23.39	8,268,821	16.91	4,129,236	26.37	15,871
Wilson & Co., Inc	1	679,775	7.47	278,012	5.54	2,616,995	5.35	1,141,772	7.29	4,716
Cudahy Packing Co	1	710,747	7.81	341,576	6.89	2,945,778	6.02	1,667,101	10.64	5,665
All other Packers	828	3,426,762	37.64	1,758,624	35.04	25,645,335	52.44	3,506,613	22.39	34,337
Total	832	9,102,825	100.00	5,018,846	100.00	48,903,860	100.00	15,661,041	100.00	78,686

Note: The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics

Gov. Ex. 24

Packers' Statement Showing Purchases of Livestock by 832 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year 1929

Purchases at Posted Stockyards

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Total	% of grand total
.....	1	1,870,200	23.10	1,351,549	32.52	6,248,363	19.85	4,814,275	36.50	14,284,387	25.09
o. (& Morris).....	1	2,251,112	27.8[illegible]	1,097,761	26.41	4,808,469	15.27	3,761,583	28.52	11,918,925	20.94
., Inc.....	1	569,857	7.0[illegible]	199,616	4.80	962,088	3.06	845,933	6.41	2,577,494	4.53
king Co.....	1	667,446	8	254,688	6.13	1,584,719	5.03	1,425,129	10.81	3,931,982	6.91
ckers.....	828	2,737,295	33.8[illegible]	1,252,499	30.14	17,880,851	56.79	2,342,368	[illegible].76	24,213,013	42.53
.....	832	8,095,910	100.00	4,156,113	100.00	31,484,490	100.00	13,189,288	100.00	56,925,801	100.00

Purchases from Sources Other Than Stockyards

.....	1	115,715	11.49	115,337	13.37	3,178,568	18.25	402,044	16.27	3,811,664	17.52
o. (& Morris).....	1	48,514	4.82	75,987	8.81	3,460,352	19.87	367,653	14.87	3,952,506	18.16
., Inc.....	1	109,918	10.92	78,396	9.09	1,654,907	9.50	295,839	11.97	2,139,060	9.83
king Co.....	1	43,301	4.30	86,888	10.07	1,361,059	7.81	241,972	9.79	1,733,220	7.96
ckers.....	828	689,467	68.47	506,125	58.66	7,764,484	44.57	1,164,245	47.10	10,124,321	46.53
.....	832	1,006,915	100.00	862,733	100.00	17,419,370	100.00	2,471,753	100.00	21,760,771	100.00

Purchases From All Sources

.....	1	1,985,915	21.82	1,466,886	29.23	9,426,931	19.28	5,216,319	33.31	18,096,051	23.00
o. (& Morris).....	1	2,299,626	25.26	1,173,748	23.39	8,268,821	16.91	4,129,236	26.37	15,871,431	20.17
., Inc.....	1	679,775	7.47	278,012	5.54	2,616,995	5.35	1,141,772	7.29	4,716,554	5.99
king Co.....	1	710,747	7.81	341,576	6.80	2,945,778	6.02	1,667,101	10.64	5,665,202	7.20
ckers.....	828	3,426,762	37.64	1,758,624	35.04	25,645,335	52.44	3,506,613	22.39	34,337,334	43.64
.....	832	9,102,825	100.00	5,018,846	100.00	48,903,860	100.00	15,661,041	100.00	78,686,572	100.00

he number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics

[fol. 1623] Gov. Ex. 25

Packers' Statement Showing Purchases of Livestock by 680 Packers Reporting to Bureau of Animal Industry under Packers and Stockyards Act, Year 1928

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Total
Purchases at Posted Stockyards										
Swift & Co	1	1,862,090	23.52	1,419,380	35.00	2,[illegible]3,771	10.27	4,622,123	37.70	10,872,
Armour & Co (& Morris)	1	2,293,106	28.97	1,118,370	27.58	5,894,966	20.39	3,611,559	29.46	12,918,
Wilson & Co., Inc	1	585,292	7.39	196,419	4.89	1,223,725	4.23	786,781	6.42	2,794,
Cudahy Packing Co	1	695,136	8.78	273,097	6.73	1,785,496	6.18	1,401,812	11.43	4,155,
All Other Packers	676	2,480,708	31.34	1,046,995	25.80	17,035,884	58.93	1,837,226	14.99	22,399,
Total	680	7,916,332	100.00	4,055,361	100.00	28,908,842	100.00	12,259,501	100.00	53,140,
Purchases at Points Other Than Posted Stockyards										
Swift & Co	1	108,997	10.49	92,796	12.31	2,641,634	15.63	427,817	19.96	3,271,
Armour & Co. (& Morris)	1	40,003	3.85	44,319	5.88	2,009,083	11.89	140,222	6.54	2,233,
Wilson & Co., Inc	1	108,997	10.40	81,498	10.81	1,650,909	9.77	300,689	14.03	2,141,
Cudahy Packing Co	1	30,488	2.94	61,271	8.13	1,168,546	6.92	168,845	7.88	1,429,
All Other Packers	676	751,483	72.32	473,916	62.87	9,425,309	55.79	1,105,798	51.59	11,756,
Total	680	1,039,068	100.00	753,800	100.00	16,895,481	100.00	2,143,371	100.00	20,831,
Total Purchases from all Sources										
wift & Co	1	1,971,087	22.01	1,512,176	31.44	5,610,405	12.25	5,049,940	35.06	14,143
Armour & Co. (& Morris)	1	2,333,109	26.05	1,162,689	24.18	7,904,049	17.26	3,751,781	26.05	15,151
Wilson & Co., Inc	1	693,389	7.75	279,917	5.82	2,874,634	6.27	1,087,470	7.55	4,935,
Cudahy Packing Co	1	725,624	8.10	334,368	6.95	2,954,042	6.45	1,570,657	10.91	5,584,
All Other Packers	676	3,232,191	36.09	1,520,011	31.61	26,461,193	57.77	2,943,024	20.43	34,156,
Total	680	8,955,400	100.00	4,809,161	100.00	45,804,323	100.00	14,402,872	100.00	73,971,

Note: The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

Gov. Ex. 25

Packers' Statement Showing Purchases of Livestock by 680 Packers Reporting to Bureau of Animal Industry under Packers and Stockyards Act, Year 1928

Purchases at Posted Stockyards

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Total	% of grand total
.....	1	1,862,090	23.52	1,419,380	35.00	2,968,771	10.27	4,622,123	37.70	10,872,364	20.46
o. (& Morris).....	1	2,293,106	28.97	1,118,370	27.58	5,894,966	20.39	3,611,559	29.46	12,918,001	24.31
., Inc.....	1	585,292	7.39	198,419	4.89	1,223,725	4.23	786,781	6.42	2,794,217	5.26
king Co.....	1	695,136	8.78	273,097	6.73	1,785,496	6.18	1,401,812	11.43	4,155,541	7.82
ckers.....	676	2,480,708	31.34	1,046,095	25.80	17,695,884	58.93	1,837,226	14.99	22,399,913	42.15
.....	680	7,916,332	100.00	4,055,361	100.00	28,908,842	100.00	12,259,501	100.00	53,140,036	100.00

Purchases at Points Other Than Posted Stockyards

.....	1	108,997	10.49	92,796	12.31	2,641,634	15.63	427,817	19.96	3,271,244	15.70
o. (& Morris).....	1	40,003	3.85	44,319	5.88	2,009,083	11.89	140,222	6.54	2,233,627	10.72
., Inc.....	1	108,097	10.40	81,498	10.81	1,650,909	9.77	300,689	14.03	2,141,193	10.28
king Co.....	1	30,488	2.94	61,271	8.13	1,168,546	6.92	168,845	7.88	1,429,150	6.86
ckers.....	676	751,483	72.32	473,916	62.87	9,425,309	55.79	1,105,798	51.59	11,756,506	56.44
.....	680	1,039,068	100.00	753,800	100.00	16,895,481	100.00	2,143,371	100.00	20,831,720	100.00

Total Purchases from all Sources

.....	1	1,971,087	22.01	1,512,176	31.44	5,610,405	12.25	5,049,940	35.06	14,143,608	19.12
o. (& Morris).....	1	2,333,109	26.05	1,162,689	24.18	7,904,049	17.26	3,751,781	26.05	15,151,628	20.48
., Inc.....	1	693,389	7.75	279,917	5.82	2,874,634	6.27	1,087,470	7.55	4,935,410	6.67
king Co.....	1	725,624	8.10	334,368	6.95	2,954,042	6.45	1,570,657	10.91	5,584,691	7.55
ckers.....	676	3,232,191	36.09	1,520,011	31.61	26,461,193	57.77	2,943,024	20.43	34,156,419	46.18
.....	680	8,955,400	100.00	4,809,161	100.00	45,804,323	100.00	14,402,872	100.00	73,971,756	100.00

The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

[fol. 1624]

Gov. Ex. 26

Packers' Statement Showing Purchases of Livestock by 611 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year 1

Purchases at Posted Stockyards

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Total
Swift & Co.	1	1,965,146	22.62	1,406,997	33.76	6,555,420	21.97	4,210,137	36.71	14,137,7
Armour & Co. (& Morris)	1	2,620,773	30.17	1,130,745	27.13	5,730,066	19.21	3,453,262	30.11	12,934,8
Wilson & Co., Inc.	1	702,329	8.09	215,782	5.18	1,034,681	3.47	748,765	6.53	2,701,5
Cudahy Packing Co.	1	762,426	8.78	295,075	7.08	1,613,217	5.41	1,301,572	11.35	3,972,2
All Other Packers	607	2,635,799	30.34	1,118,742	26.85	14,897,229	49.94	1,754,261	15.30	20,406,0
Total	611	8,686,473	100.00	4,167,341	100.00	29,830,613	100.00	11,467,997	100.00	54,152,4

Purchases at Points Other Than Posted Stockyards

Swift & Co.	1	70,306	7.71	60,637	8.66	1,828,750	13.02	486,346	25.04	2,446,03
Armour & Co. (& Morris)	1	36,988	4.06	28,125	4.01	1,695,885	12.07	82,327	4.24	1,843,32
Wilson & Co., Inc.	1	123,698	13.56	81,495	11.64	1,519,785	10.82	282,993	14.57	2,007,97
Cudahy Packing Co.	1	33,219	3.64	61,024	8.71	944,073	6.72	155,834	8.02	1,194,15
All Other Packers	607	647,814	71.03	469,068	66.98	8,058,253	57.37	934,684	48.13	10,109,81
Total	611	912,025	100.00	700,349	100.00	14,046,746	100.00	1,942,184	100.00	17,601,30

Total Purchases From All Sources

Swift & Co.	1	2,035,452	21.20	1,467,634	30.15	8,384,170	19.11	4,696,483	35.02	16,683,73
Armour & Co. (& Morris)	1	2,657,761	27.69	1,158,870	23.81	7,425,951	16.92	3,535,589	26.37	14,778,17
Wilson & Co., Inc.	1	826,027	8.61	297,277	6.11	2,554,466	5.82	1,031,758	7.69	4,709,52
Cudahy Packing Co.	1	795,645	8.29	356,099	7.31	2,557,290	5.83	1,457,406	10.87	5,166,44
All Other Packers	607	3,283,613	34.21	1,587,810	32.62	22,955,482	52.32	2,688,945	20.05	30,515,85
Total	611	9,598,498	100.00	4,867,690	100.00	43,877,359	100.00	13,410,181	100.00	71,753,7

NOTE: The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

Gov. Ex. 26

ckers' Statement Showing Purchases of Livestock by 611 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year 1927

	No. of concerns	Cattle	% of total	Calves	% of total	Hogs	% of total	Sheep	% of total	Total	% of grand total
Purchases at Posted Stockyards											
.....	1	1,965,146	22.62	1,406,997	33.76	6,555,420	21.97	4,210,137	36.71	14,137,700	26.11
& Morris).....	1	2,620,773	30.17	1,130,745	27.13	5,730,036	19.21	3,453,262	30.11	12,934,816	23.89
ac.....	1	702,329	8.09	215,782	5.18	1,034,681	3.47	748,765	6.53	2,701,557	4.99
Co.....	1	762,426	8.78	295,075	7.08	1,613,217	5.41	1,301,572	11.35	3,972,290	7.33
rs.....	607	2,635,799	30.34	1,118,742	26.85	14,897,229	49.94	1,754,261	15.30	20,406,031	37.68
.....	611	8,686,473	100.00	4,167,341	100.00	29,830,613	100.00	11,467,997	100.00	54,152,424	100.00
Purchases at Points Other Than Posted Stockyards											
.....	1	70,306	7.71	60,637	8.66	1,828,750	13.02	486,346	25.04	2,446,039	13.90
& Morris).....	1	36,988	4.06	28,125	4.01	1,695,885	12.07	82,327	4.24	1,843,325	10.47
ac.....	1	123,698	13.56	81,495	11.64	1,519,785	10.82	282,993	14.57	2,007,971	11.41
Co.....	1	33,219	3.64	61,024	8.71	944,073	6.72	155,834	8.02	1,194,150	6.78
rs.....	607	647,814	71.03	469,068	66.98	8,058,253	57.37	934,684	48.13	10,109,819	57.44
.....	611	912,025	100.00	700,349	100.00	14,046,746	100.00	1,942,184	100.00	17,601,304	100.00
Total Purchases From All Sources											
.....	1	2,035,452	21.20	1,467,634	30.15	8,384,170	19.11	4,696,483	35.02	16,683,739	23.11
& Morris).....	1	2,657,761	27.69	1,158,870	23.81	7,425,951	16.92	3,535,589	26.37	14,778,171	20.60
ac.....	1	826,027	8.61	297,277	6.11	2,554,466	5.82	1,031,758	7.69	4,709,528	6.56
Co.....	1	795,645	8.29	356,099	7.31	2,557,290	5.83	1,457,406	10.87	5,166,440	7.20
rs.....	607	3,283,613	34.21	1,587,810	32.62	22,955,482	52.32	2,688,945	20.05	30,515,850	42.53
.....	611	9,598,498	100.00	4,867,690	100.00	43,877,359	100.00	13,410,181	100.00	71,753,728	100.00

number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

[fol. 1625]

Gov. Ex. 27

Packers' Statement Showing Purchases of Livestock by 580 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year, 192

	No. of concerns	Cattle and calves	% of total	Hogs	% of total	Sheep	% of total	Total
Purchases from Posted Stockyards								
Swift & Co.	1	3,690,810	29.00	6,151,824	22.27	4,255,082	38.94	14,097,716
Armour & Co. (& Morris)	1	3,240,243	25.46	4,627,514	16.76	2,948,375	26.98	10,816,132
Wilson & Co.	1	999,777	7.86	975,967	3.53	847,701	7.76	2,823,445
Cudahy Packing Co.	1	1,159,036	9.11	1,614,852	5.85	1,228,691	11.25	4,002,579
All Other Packers	576	3,635,363	28.57	14,246,748	51.59	1,646,270	15.07	19,528,381
Total	580	12,725,229	100.00	27,616,925	100.00	10,926,119	100.00	51,268,273
Purchases From Sources Other Than Stockyards								
Swift & Co.	1	168,929	9.84	1,322,049	10.68	438,018	20.87	1,928,996
Armour & Co. (& Morris)	1	46,906	2.73	1,154,490	9.32	20,849	1.00	1,222,254
Wilson & Co.	1	209,568	12.21	1,391,707	11.24	245,593	11.70	1,846,868
Cudahy Packing Co.	1	57,499	3.35	533,541	4.31	172,779	8.23	763,819
All Other Packers	576	1,233,737	71.87	7,980,339	64.45	1,221,264	58.20	10,435,340
Total	580	1,716,639	100.00	12,382,135	100.00	2,098,503	100.00	16,197,277
Purchases From All Sources								
Swift & Co.	1	3,859,739	26.73	7,473,873	18.68	4,693,100	36.03	16,026,712
Armour & Co. (& Morris)	1	3,287,149	22.76	5,782,013	14.46	2,969,224	22.80	12,038,386
Wilson & Co.	1	1,209,345	8.37	2,367,694	5.92	1,093,294	8.39	4,670,333
Cudahy Packing Co.	1	1,216,535	8.42	2,148,393	5.37	1,401,470	10.76	4,766,398
All Other Packers	576	4,869,100	33.72	22,227,087	55.57	2,867,534	22.02	29,963,721
Total	580	14,441,868	100.00	39,999,060	100.00	13,024,622	100.00	67,465,550

Note: The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

Gov. Ex. 27

Packers' Statement Showing Purchases of Livestock by 580 Packers Reporting to the Bureau of Animal Industry under the Packers and Stockyards Act, Year, 1926

Purchases from Posted Stockyards

	No. of concerns	Cattle and calves	% of total	Hogs	% of total	Sheep	% of total	Total	% of grand total
.....	1	3,690,810	29.00	6,151,824	22.27	4,255,082	38.94	14,097,716	27.50
Co. (& Morris).....	1	3,240,243	25.46	4,627,514	16.76	2,948,375	26.98	10,816,132	21.09
Co.....	1	999,777	7.86	975,987	3.53	847,701	7.76	2,823,465	5.51
cking Co.....	1	1,159,036	9.11	1,614,852	5.85	1,228,691	11.25	4,002,579	7.81
Packers.....	576	3,635,363	28.57	14,246,748	51.59	1,646,270	15.07	19,528,381	38.09
al.....	580	12,725,229	100.00	27,616,925	100.00	10,926,119	100.00	51,268,273	1100.00

Purchases From Sources Other Than Stockyards

.....	1	168,929	9.84	1,322,049	10.68	438,018	20.87	1,928,996	1.91
Co. (& Morris).....	1	46,906	2.73	1,154,499	9.32	20,849	1.00	1,222,254	7.55
Co.....	1	209,568	12.21	1,391,707	11.24	245,593	11.70	1,846,868	11.40
cking Co.....	1	57,499	3.35	533,541	4.31	172,779	8.23	763,819	4.71
Packers.....	576	1,233,737	71.87	7,980,339	64.45	1,221,264	58.20	10,435,340	64.43
al.....	580	1,716,639	100.00	12,382,135	100.00	2,098,503	100.00	16,197,277	100.00

Purchases From All Sources

.....	1	3,859,739	26.73	7,473,873	18.68	4,693,100	36.03	16,026,712	23.76
Co. (& Morris).....	1	3,287,149	22.76	5,782,013	14.46	2,969,224	22.80	12,038,386	17.84
Co.....	1	1,209,345	8.37	2,367,694	5.92	1,093,294	8.39	4,670,333	6.92
cking Co.....	1	1,216,535	8.42	2,148,393	5.37	1,401,470	10.76	4,766,398	7.07
Packers.....	576	4,869,100	33.72	22,227,087	55.57	2,867,534	22.02	29,963,721	44.41
al.....	580	14,441,868	100.00	39,999,060	100.00	13,024,622	100.00	67,465,550	100.00

The number of head, segregated as to source of purchases in the case of Swift and Wilson, was obtained from Bureau of Agricultural Economics.

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Gov. Ex. 29

Packers' Consent Decree Case

Tabulations of Wholesale and Retail Prices of Lamb

Year	Lambs		Dressed lamb (WH)		Leg of lamb (R)	
	Price Cwt.	Increase or decrease	Increase or decrease	Price per pound	Price per pound	Increase or decrease
	$	¢	¢	¢	¢	¢
1913	$6.03	....	....	14.9	18.9	....
1914	6.49	.46	.3	15.2	19.5	.6
1915	7.38	.89	1.2	16.4	20.4	.9
1916	9.50	2.12	1.9	18.3	22.6	2.2
1917	13.60	4.10	5.7	24.0	28.9	6.3
1918	13.65	.05	3.	27.0	34.9	6.
1919	13.05	.60—	.7	27.7	36.5	1.6
1920	9.41	3.64—	1.4	29.1	39.3	2.8
1921	7.83	1.58—	— 8.6	20.5	33.7	—5.6
1922	10.30	2.47	5.	25.5	36.6	2.9
1923	10.54	.24	— .2	25.3	36.7	.1
1924	11.45	.91	— .2	25.1	37.1	.4
1925	11.98	.53	1.8	26.9	38.6	1.5
1926	11.36	.62—	— .7	26.2	39.0	.4
1927	11.76	.40	....	26.2	38.9	— .1
1928 Average for year	12.31	.55	.5	26.7	39.4	.5
January	11.34	.42—	— 3.2	23.0	37.4	—2.
February	11.90	.56	2.5	25.5	37.5	.1
March	12.31	.41	1.9	27.4	38.2	.7
April	12.73	.42	2.6	30.0	39.7	1.5
May	13.03	.30	1.	31.0	41.5	1.8
June	13.18	.15	.6	31.6	42.2	.7
July	12.25	.93—	— 1.3	30.3	41.1	— 1.1
August	11.88	.37—	— 2.3	28.0	40.2	— .9
September	11.97	.09	— 1.5	26.5	40.3	.1
October	11.57	.40—	— 4.5	22.0	38.8	— 1.5
November	11.50	.07—	....	22.0	38.0	— .8
December	11.41	.09—	.8	22.8	37.6	— .4
1929 Average for year	....	....	1.1	25.6	40.1	.7
January	12.23	.82	4.7	27.5	39.9	2.3
February	12.60	.37	— .7	26.8	40.3	.4
March	13.12	.52	.8	27.6	40.9	.6
April	13.36	.24	.4	28.0	41.8	.9
May	12.79	.57—	— 1.	27.0	42.1	.3
June	12.31	.48—	— 1.	26.0	41.2	— .9
July	11.90	.41—	— 1.8	27.8	41.1	— .1
August	11.46	.44—	— 2.6	25.2	40.3	— .8
September	11.08	.38—	— 1.9	23.3	39.5	— .8
October	10.97	.11—	— 2.3	21.0	38.5	— 1.
November	10.74	.23—	1.4	22.4	37.9	— .6
December	10.76	.02	1.6	24.0	37.9	....
1930 Average for year	....	....	....	....	....	....
January	11.10	.34	.6	24.6	39.5	1.6
February	10.46	.64—	— 4.1	20.5	38.1	— 1.4
March	9.63	.83—	— .7	19.8	36.6	— 1.5
April	9.02	.61—	— 1.8	18.0	35.8	— .8
May	8.92	.10—	1.6	19.6	35.9	.1
June	9.02	.10	3.2	22.8	36.5	.6
July	8.08	.94—	— 1.8	21.0	35.7	— .8
August	6.82	1.26—	— 2.5	18.5	33.7	— 2.

Note: (WH) Means Wholesale (Chicago Prices)
(R) Means Retail (U. S. Average)

*Yearly averages in this column are computed on the first five months of the year stated, and the last seven months of the preceding year.

Source: Lamb—Dept. of Agriculture Bulletin #1107 for 1930, page 870. Dept. of Agriculture, "Crops and Markets", monthly from Jan. 1930 to Sept. 1930, incl. Vol. 7, No. 1 to No. 9, incl.

Dressed Lamb: Bureau of Labor Statistics Bulletin #493, "Wholesale Prices 1913 to 1928, Page 75. Bureau of Labor Statistics Bulletin #521, "Wholesale Prices 1929, Page 22." Bureau of Labor Statistics, Wholesale Prices of Commodities, Monthly Jan. 1930 to Aug. 1930, incl.

Leg of Lamb: Bureau of Labor Statistics Bulletin #495, "Retail Prices 1913 to 1928, Pages 33-34-35." Bureau of Labor Statistics, Prices, Wholesale and Retail, Monthly Jan. 1929 to Aug. 1930.

Packers' Consent Decree Case

Tabulations of Wholesale and Retail Prices of Beef

Year	Good to choice steers		Carcass of native steers		Loins (WH)		Sirloin steak (R)		#2 Rounds (WH)		Roundsteak (R)	
	Price Cwt. $	Increase or decrease $	Increase or decrease ¢	Price per pound ¢	Price per pound ¢	Increase or decrease	Increase or decrease ¢	Price per pound ¢	Price per pound ¢	Increase or decrease ¢	Increase or decrease ¢	Price per pound ¢
1913	5.91	....	...	13.0	16.8	...	...	25.4	13.1	...	...	22.3
1914	6.24	.33	.6	13.6	17.1	.3	.5	25.9	13.3	.2	1.3	23.6
1915	6.01	.23—	— .7	12.9	17.6	.5	— .2	25.7	12.4	.9—	— .6	23.0
1916	6.48	.47	.9	13.8	19.1	1.5	1.6	27.3	13.0	.6	1.5	24.5
1917	8.17	1.69	2.9	16.7	21.5	2.4	4.2	31.5	16.2	3.2	4.5	29.0
1918	9.46	1.29	5.4	22.1	29.2	7.7	7.4	38.9	22.1	5.9	7.9	36.9
1919	9.61	.15	1.2	23.3	31.3	2.1	2.8	41.7	22.4	.3	2.	38.9
1920	8.38	1.23—	— .3	23.0	35.0	3.7	2.0	43.7	21.3	1.1—	.6	39.5
1921	5.44	2.94—	—6.7	16.3	26.5	8.5—	—4.9	38.8	14.5	6.8—	—5.1	34.4
1922	5.43	.01—	—1.3	15.0	25.5	1. —	—1.4	37.4	14.5	...	—2.1	32.3
1923	5.57	.14	.8	15.8	27.2	1.7	1.7	39.1	15.4	.9	1.2	33.5
1924	5.59	.02	1.3	17.1	26.0	1.2—	.5	39.6	15.2	.2—	.3	33.8
1925	6.26	.67	.9	18.0	26.8	.8	1.	40.6	15.8	.6	.9	34.7
1926	6.46	.20	—1.6	16.4	23.8	.3—	.7	41.3	15.6	.2—	.9	35.6
1927	7.54	1.08	2.2	18.6	29.9	6.1	1.3	42.6	18.2	2.6	1.5	37.1
1928 Average for year	9.18	1.64	4.2	22.8	32.2	2.3	5.2	47.8	21.9	3.7	4.9	42.0
January	8.48	.94	3.4	22.0	34.5	4.6	1.8	44.4	20.0	1.8	1.5	38.6
February	8.72	.24	— .8	21.2	34.4	.1—	.4	44.8	20.0	...	.3	38.9
March	8.81	.09	— .7	20.5	34.0	.4—	.1	44.9	20.2	.2	.2	39.1
April	8.92	.11	— .5	20.0	31.5	2.5—	.4	45.3	20.3	.1	.5	39.6
May	9.09	.17	.1	20.1	29.3	2.2—	.8	46.1	21.1	.8	.8	40.4
June	9.10	.01	1.1	21.2	28.0	1.3—	1.3	47.4	22.7	1.6	1.2	41.6
July	9.19	.09	1.7	22.9	28.8	.8	2.3	49.7	24.3	1.6	2.3	43.9
August	9.51	.32	1.5	24.4	34.0	5.2	1.3	51.0	25.5	1.2	1.2	45.1
September	9.96	.45	1.5	25.9	34.0	...	.8	51.8	24.3	1.2—	.7	45.8
October	9.63	.33—	— .4	25.5	33.8	.2—	—1.5	50.3	22.3	2. —	—1.2	44.6
November	9.27	.36—	— .2	25.3	32.8	1. —	—1.2	49.1	21.4	.9—	—1.2	43.4
December	8.94	.33—	— .8	24.5	32.0	.8—	— .9	48.2	20.3	1.1—	— .7	42.7
1929 Average for year	9.20	.02	.3	23.1	32.0	.2—	2.3	0.1	21.5	.4—	2.4	44.4
January	8.97	.03	— .5	24.0	32.3	.3	.2	48.4	20.0	.3—	— .1	42.6
February	8.89	.08—	—3.1	20.9	30.8	1.5—	— .6	47.8	19.1	.9—	— .4	42.2
March	9.16	.27	.2	21.1	30.0	.8—	.1	47.9	19.3	.2	...	42.2
April	9.53	.37	1.3	22.4	30.0	...	1.1	49.0	21.5	2.2	1.2	43.4
May	9.72	.19	.6	23.0	31.8	1.8	1.4	50.4	22.9	1.4	1.5	44.9
June	9.72	...	.4	23.4	31.0	.8—	.8	51.2	23.5	.6	.9	45.8
July	9.80	.08	.4	23.8	31.5	.5	2.6	53.8	24.8	1.3	1.2	47.0
August	9.62	.18—	...	23.8	35.0	3.5	—1.4	52.4	25.5	.7	...	47.0
September	9.22	.40—	— .2	23.6	34.4	.6—	— .9	51.5	23.0	2.5—	— .9	46.1
October	8.92	.30—	...	23.6	32.5	1.9—	—1.2	50.3	19.5	3.5—	—1.6	44.5
November	8.63	.29—	.4	24.0	32.0	.5—	—1.	49.3	19.6	.1	— .7	43.8
December	8.48	.15—	...	24.0	32.3	.3	— .4	48.9	19.5	.1—	— .4	43.4
1930 Average for year	....	....	....	....	....	....	....	....	....	....	....	....
January	8.69	.21	...	24.0	32.2	.1—	.1	49.0	19.9	.4	.2	43.6
February	8.68	.01—	— .4	23.6	31.0	1.2—	— .4	48.6	21.1	1.2	— .3	43.3
March	8.77	.09	.4	24.0	34.8	3.8	— .2	48.4	21.5	.4	— .3	43.0
April	8.65	.12—	— .1	23.9	31.0	3.8—	— .1	48.3	21.5	...	.1	43.1
May	8.36	.29—	—2.4	21.5	31.0	...	...	48.3	21.6	.1	— .1	43.0
June	8.20	.16—	—2.	19.5	30.5	.5—	— .4	47.9	21.5	.1—	— .3	42.7
July	7.12	1.08—	—2.1	17.4	27.4	3.1—	—1.6	46.3	19.1	2.4	—1.6	41.1
August	6.26	.86—	— .6	16.8	24.0	3.4—	—1.7	44.6	18.0	1.1	—1.7	39.4

Note: (WH) Means Wholesale (Chicago Prices)
(R) Means Retail (U. S. Average)

Source: Good to Choice Steers—Dept. of Agriculture, Bulletin #1107 for 1930, Page 831. Dept. of Agriculture, Crops and Markets, Monthly, Jan. 1930 to Sept. 1930, incl. Vol. 7, No. 1 to 9 incl.

Carcass of Native Steers—Loins—#2 Rounds—Bureau of Labor Statistics, Bulletin #493, Wholesale Prices 1913 to 1928, Page 73. Bulletin #521, Wholesale Prices 1929, Pages 22 and 57. Bureau of Labor Statistics, Wholesale Prices of Commodities, Monthly, Jan. 1930 to Aug. 1930, incl.

Sirloin Steak—Round Steak—Bureau of Labor Statistics, Bulletin #495, Retail Prices 1913 to 1928, Pages 32 and 34. Bureau of Labor Statistics, Prices, Wholesale and Retail, Monthly, Jan. 1929 to Aug. 1930, incl.

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Gov. Ex. 31

Packers' Consent Decree Case Tabulations of Wholesale and Retail Prices of Pork

Year	Hogs		Pork loins (WH)		Pork chops (R)		Bacon strips (WH)		Bacon (R)		Cured Ham
	Price cwt.	Increase or decrease	Price per pound	Increase or decrease	Increase or decrease	Price per pound	Price per pound	Increase or decrease	Increase or decrease	Price per pound	Price per pound
	$	$	¢	¢	¢	¢	¢	¢	¢	¢	¢
1913	7.44	....	14.9	....	....	21.0	17.7	....	....	27.0	16.6
1914	7.52	.08	15.4	.5	1.	22.0	18.5	.8	.5	27.5	16.7
1915	6.56	— .96	14.3	1.1—	— 1.7	20.3	16.4	2.1—	— .6	26.9	15.3
1916	8.13	1.57	16.2	1.9	2.4	22.7	18.7	2.3	1.8	28.7	18.5
1917	13.46	5.33	24.4	8.2	9.2	31.9	31.5	12.8	12.3	41.0	25.2
1918	15.85	2.39	29.5	5.1	7.1	39.0	38.8	7.3	11.9	52.9	31.8
1919	16.02	.17	31.5	2.	3.3	42.3	34.8	4. —	2.5	55.4	34.3
1920	12.86	—3.16	30.7	.8—	....	42.3	31.5	3.3—	— 3.1	52.3	33.4
1921	7.81	—5.05	22.5	8.2—	— 7.4	34.9	21.8	9.7—	— 9.6	42.7	26.8
1922	8.32	.51	21.4	1.1—	— 1.9	33.0	23.2	1.4	— 2.9	39.8	26.4
1923	7.11	—1.21	18.0	3.4—	— 2.6	30.4	20.1	3.1—	— .7	39.1	21.2
1924	7.46	.35	19.2	1.2	.4	30.8	20.5	.4	— 1.4	37.7	20.2
1925	10.88	3.42	25.0	5.8	5.8	36.6	30.9	10.4	9.	46.7	27.1
1926	11.75	.87	27.8	2.8	2.9	39.5	30.4	.5—	3.6	50.3	30.8
1927	9.67	—2.08	24.0	3.8—	— 2.7	36.8	27.2	3.2—	— 3.1	47.2	24.6
1928 Average for year	8.60	—1.07	22.5	1.5—	— 2.	34.8	26.1	1.1—	— 3.2	44.0	22.8
January	7.81	—1.86	16.2	6.3—	— 3.5	31.3	31.6	5.5	.6	44.6	21.2
February	7.62	— .19	14.9	1.3—	— 1.8	29.5	26.8	4.8—	— .9	43.7	21.0
March	7.48	— .14	15.3	.4	— .9	28.6	22.7	4.1—	— .7	43.0	20.7
April	7.75	.27	22.8	7.5	2.7	31.3	25.0	2.3	— .1	42.9	20.1
May	8.82	1.07	24.4	1.6	4.1	35.4	26.0	1.	.2	43.1	20.6
June	8.70	— .12	22.4	2. —	— .6	34.8	27.0	1.	.1	43.2	21.5
July	9.64	.94	26.5	4.1	2.5	37.3	26.6	.4—	.7	43.9	23.6
August	10.01	.37	31.3	5.3	2.6	39.9	25.6	1. —	.9	44.8	24.9
September	11.17	1.16	33.8	2.	4.4	44.3	27.3	1.7	.6	45.4	25.4
October	9.55	—1.62	23.8	10. —	— 6.7	37.6	28.0	.7	— .1	45.3	26.0
November	8.51	—1.04	21.2	2.6—	— 1.9	35.7	25.0	3. —	— .8	44.5	24.3
December	7.93	— .58	16.8	4.4—	— 4.4	31.3	22.9	2.1—	— 1.2	43.3	24.4
1929 Average for year	9.27*	.67	24.6	2.1	2.1	36.9	26.3	.2	— .5	43.5	24.4
January	8.18	.25	18.4	1.6	1.	32.3	22.3	.6—	— .3	43.0	23.2
February	8.88	.70	19.8	1.4	.7	33.0	23.7	1.4	— .3	42.7	23.1
March	10.00	1.12	25.8	6.	2.2	35.2	25.7	2.	.2	42.9	23.8
April	10.20	.20	26.5	.7	2.	37.2	26.5	.8	.4	43.3	24.8
May	9.96	— .24	25.4	1.1—	.5	37.7	26.7	.2	.2	43.5	24.9
June	9.80	— .16	23.8	1.6—	....	37.7	26.8	.1	.3	43.6	23.4
July	10.33	.53	26.8	3.	1.8	39.5	28.3	1.5	.5	44.3	26.7
August	10.28	— .05	29.2	2.4	.6	40.1	28.7	.4	.4	44.7	27.5
September	9.53	— .75	30.3	1.1	.6	40.7	28.5	.2—	.4	44.3	28.7
October	9.10	— .43	26.9	3.4—	— 1.8	38.9	27.3	1.2—	— .6	43.7	24.2
November	8.54	— .56	21.8	5.6—	— 3.1	35.8	26.0	1.3—	— .7	43.0	21.8
December	8.53	— .01	20.3	1 —	— 1.5	34.3	24.8	1.2—	— .5	42.5	21.6
1930 Average for year	....	....	....	....	....	....	....	....	....	....	....
January	8.80	.27	21.6	1.3	1.	35.3	24.3	.5—	— .1	42.4	23.0
February	9.48	.68	22.0	.4	— .1	35.2	26.8	2.5	.2	42.6	25.3
March	9.57	.09	26.3	4.3	.9	36.1	25.8	1. —	....	42.6	24.3
April	9.17	— .40	24.5	1.8—	1.	37.1	24.0	1.8—	— .1	42.5	23.0
May	8.99	— .18	23.1	1.4—	— 1.	36.1	24.0	....	— .2	42.3	22.8
June	9.10	.11	23.3	.8—	.5	35.6	25.0	1.	....	42.3	23.1
July	8.38	— .72	23.6	1.3	— .1	36.5	25.0	....	— .3	42.0	23.4
August	8.31	.13	23.4	4.8	10.2	46.7	25.0	....	....	42.0	22.8

Norm: (WH) Means wholesale (Chicago prices.)

(R) Means retail (U. S. Average)

* For period November, 1928—October 1929 inclusive.

Source: Hogs-Dept. of Agriculture, Bulletin # 1107 for 1928, page 60; Dept. of Agriculture, Monthly Jan. 1930 to Sept. 1930, Incl., Vol. 7, No. 1 to 9 Incl.

Pork Loins—Bacon Strips—Cured Hams, Bureau of Labor Statistics, Bulletin 1936, pages 76-77. Bulletin # 501, wholesale prices, 1929, page 27 and 28; also prices of commodities, monthly Jan. 1930 to Aug. 1930, Incl.

Pork chops—Bacon—Hams—Bureau of Labor Statistics, Bulletin 1936, page 76. Prices wholesale and retail, monthly, Jan. 1913 to Aug. 1930, Incl.

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Gov. Ex. 31

Packers' Consent Decree Case Tabulations of Wholesale and Retail Prices of Pork

	Hogs		Pork loins (WH)		Pork chops (R)		Bacon strips (WH)		Bacon (R)		Cured Hams (WH)		Ham (R)	
	Price cwt.	Increase or decrease	Price per pound	Increase or decrease	Increase or decrease	Price per pound	Price per pound	Increase or decrease	Increase or decrease	Price per pound	Price per pound	Increase or decrease	Increase or decrease	Price per pound
	$	$	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢
.....	7.44	....	14.9	....	....	21.0	17.7	....	....	27.0	16.6	.....	....	26.9
.....	7.52	.08	15.4	.5	1.	22.0	18.5	.8	.5	27.5	16.7	.1	.4	27.3
.....	6.56	− .96	14.3	1.1−	− 1.7	20.3	16.4	2.1−	− .6	26.9	15.3	1.4−	− 1.2	26.1
.....	8.13	1.57	16.2	1.9	2.4	22.7	18.7	2.3	1.8	28.7	18.5	3.2	3.3	29.4
.....	13.46	5.33	24.4	8.2	9.2	31.9	31.5	12.8	12.3	41.0	25.2	6.7	8.8	38.2
.....	15.85	2.39	29.5	5.1	7.1	39.0	38.8	7.3	11.9	52.9	31.8	6.6	9.7	47.9
.....	16.02	.17	31.5	2.	3.3	42.3	34.8	4. −	2.5	55.4	34.3	2.5	5.5	53.4
.....	12.86	−3.16	30.7	.8−	....	42.3	31.5	3.3−	− 3.1	52.3	33.4	.9−	2.1	55.5
.....	7.81	−5.05	22.5	8.2−	− 7.4	34.9	21.8	9.7−	− 9.6	42.7	26.8	6.6−	− 6.7	48.8
.....	8.32	.51	21.4	1.1−	− 1.9	33.0	23.2	1.4	− 2.9	39.8	26.4	.4−	....	48.8
.....	7.11	−1.21	18.0	3.4−	− 2.6	30.4	20.1	3.1−	− .7	39.1	21.2	5.2−	− 3.3	45.5
.....	7.46	.35	19.2	1.2	.4	30.8	20.5	.4	− 1.4	37.7	20.2	1. −	− .2	45.3
.....	10.88	3.42	25.0	5.8	5.8	36.6	30.9	10.4	9.	46.7	27.1	6.9	7.3	52.6
.....	11.75	.87	27.8	2.8	*2.9	39.5	30.4	.5−	3.6	50.3	30.8	3.7	4.8	57.4
.....	9.67	−2.08	24.0	3.8−	− 2.7	36.8	27.2	3.2−	− 3.1	47.2	24.6	6.2−	− 2.4	55.0
ge for year.....	8.60	−1.07	22.5	1.5−	− 2.	34.8	26.1	1.1−	− 3.2	44.0	22.8	1.8−	− 2.1	52.9
y.....	7.81	−1.86	16.2	6.3−	− 3.5	31.3	31.6	5.5	.6	44.6	21.2	1.6−	− 1.2	51.7
ry.....	7.62	− .19	14.9	1.3−	− 1.8	29.5	26.8	4.8−	− .9	43.7	21.0	.2−	− .5	51.2
.....	7.48	− .14	15.3	.4	− .9	28.6	22.7	4.1−	− .7	43.0	20.7	.3−	− .7	50.5
.....	7.75	.27	22.8	7.5	2.7	31.3	25.0	2.3	− .1	42.9	20.1	.6−	.1	50.6
.....	8.82	1.07	24.4	1.6	4.1	35.4	26.0	1.	.2	43.1	20.6	.5	.6	51.2
.....	8.70	− .12	22.4	2. −	− .6	34.8	27.0	1.	.1	43.2	21.5	.9	.5	51.7
.....	9.64	.94	26.5	4.1	2.5	37.3	26.6	.4−	.7	43.9	23.6	2.1	1.7	53.4
.....	10.01	.37	31.8	5.3	2.6	39.9	25.6	1. −	.9	44.8	24.9	1.3	1.6	55.0
mber.....	11.17	1.16	33.8	2.	4.4	44.3	27.3	1.7	.6	45.4	25.4	.5	1.	56.0
r.....	9.55	−1.62	23.8	10. −	− 6.7	37.6	28.0	.7	− .1	45.3	26.0	.6	− .4	55.6
mber.....	8.51	−1.04	21.2	2.6−	− 1.9	35.7	25.0	3. −	− .8	44.5	24.3	1.7−	− 1.	54.6
mber.....	7.93	− .58	16.8	4.4−	− 4.4	31.3	22.9	2.1−	− 1.2	43.3	24.4	.1	− 1.2	53.4
ge for year.....	9.27*	.67	24.6	2.1	2.1	36.9	26.3	.2	− .5	43.5	24.4	1.6	1.8	54.8
y.....	8.18	.25	18.4	1.6	1.	32.3	22.3	.6−	− .3	43.0	23.2	1.2−	.4	53.8
ry.....	8.88	.70	19.8	1.4	.7	33.0	23.7	1.4	− .3	42.7	23.1	.1−	− .1	53.7
.....	10.00	1.12	25.8	6.	2.2	35.2	25.7	2.	.2	42.9	23.8	.7	.6	54.3
.....	10.20	.20	26.5	.7	2.	37.2	26.5	.8	.4	43.3	24.8	1.	.4	54.7
.....	9.96	− .24	25.4	1.1−	.5	37.7	26.7	.2	.2	43.5	24.9	.1	.4	55.1
.....	9.80	− .16	23.8	1.6−	....	37.7	26.8	.1	.3	43.8	25.4	.5	.2	55.3
.....	10.33	.53	26.8	3.	1.8	39.5	28.3	1.5	.5	44.3	26.7	1.3	− .2	55.1
.....	10.28	− .05	29.2	2.4	.6	40.1	28.7	.4	.4	44.7	27.5	.8	1.7	56.8
mber.....	9.53	− .75	30.3	1.1	.6	40.7	28.5	.2−	− .4	44.3	26.7	.8−	− .4	56.4
r.....	9.10	− .43	26.9	3.4−	− 1.8	38.9	27.3	1.2−	− .6	43.7	24.2	2.5−	− 1.3	55.1
mber.....	8.54	− .56	21.3	5.6−	− 3.1	35.8	26.0	1.3−	− .7	43.0	21.8	2.4−	− 1.2	53.9
mber.....	8.53	− .01	20.3	1. −	− 1.5	34.3	24.8	1.2−	− .5	42.5	21.5	.3−	− .5	53.4
ge for year.....	....	....	....	....	....	....	....	....	....	....	....	....	....	....
y.....	8.80	.27	21.6	1.3	1.	35.3	24.3	.5−	− .1	42.4	23.9	2.4	.1	53.5
ry.....	9.48	.68	22.0	.4	− .1	35.2	26.8	2.5	.2	42.6	25.2	1.3	.5	54.0
.....	9.57	.09	26.3	4.3	.9	36.1	25.8	1. −	....	42.6	24.3	.9−	.1	54.1
.....	9.17	− .40	24.5	1.8−	1.	37.1	24.0	1.8−	− .1	42.5	22.9	1.4−	− .2	53.9
.....	8.99	− .18	23.1	1.4−	− 1.	36.1	24.0	....	− .2	42.3	22.8	.1−	.1	54.0
.....	9.10	.11	22.3	.8−	.5	36.6	25.0	1.	....	42.3	23.3	.5	....	54.0
.....	8.38	− .72	23.6	1.3	− .1	36.5	25.0	....	....	42.3	23.0	.3−	− .1	53.9
.....	8.51	.13	28.4	4.8	10.2	46.7	25.0	....	− .3	42.0	22.9	.1−	− .6	53.3

(WH) Means wholesale (Chicago prices.)

(R) Means retail (U.S. Average)

riod November, 1928—October 1929 inclusive.

Source: Hogs-Dept. of Agriculture, Bulletin #1107 for 1930, page 853. Dept. of Agriculture, Crops and Markets, Monthly Jan. 1930 to Sept. 1930, Incl., Vol. 7, No. 1 to 9 incl.

Pork Loins—Bacon Strips—Cured Hams—Bureau of Labor Statistics, Bulletin #493, wholesale prices 1913 to 1923, pages 75-77. Bulletin #521, wholesale prices 1926, pages 22 and 57. Bureau of Labor Statistics, wholesale prices of commodities, monthly Jan. 1930 to Aug. 1930, incl.

Pork chops—Bacon—Ham—Bureau of Labor Statistics, Bulletin #495, retail prices 1913 to 1928, pages 33-34-35. Prices wholesale and retail, monthly, Jan. 1930 to Aug. 1930, incl.

[fol. 1629] IN SUPREME COURT OF DISTRICT OF COLUMBIA

Eq. No. 37623

UNITED STATES OF AMERICA

vs.

SWIFT & COMPANY et al.

OPINION—Filed January 5, 1931

In 1917 by order of the President of the United States the Federal Trade Commission made an investigation of the business conducted by five large concerns engaged in the slaughter of live stock. These packers were Swift & Company, Morris & Company, Armour & Company, Wilson & Company and the Cudahy Packing Company, each of which owned or controlled numerous subsidiary companies. After the Commission had made its report, the government filed its original bill or petition in this case against these parent companies and their subsidiaries, and also against certain individuals, who were officials of these companies. This bill alleged that the defendants, whose business originally was the purchase and slaughter of live stock and the preparation and sale of its products, had not only extended these operations until they were nation wide, but had also added large dealings in foods other than meats and in many other commodities; that by various methods set out in the bill, they had built up an unlawful monopoly and control of a great portion of the food supply of the nation, were attempting to extend that monopoly; and that the result was that they artificially controlled the food supply of the nation. The bill sought an injunction to end this monopoly and the various practices by which it had been brought about.

At the same time the defendants filed their answers in which they denied all the unlawful acts set forth in the bill. Nevertheless a decree was entered on the same day with the consent of all parties, but with the provision in the decree that the consent of the defendants should not constitute any admission, nor the entry of the decree any adjudication that they had violated any law of the United States. The decree in substance enjoined the defendants, among other things:

From entering into any contract in restraint of trade or commerce among the several states, or monopolizing any part of it; from owning any interest in public stock yards, terminal railroads or market newspapers; from permit- [fol. 1630] ting the use by others of any of their distributive systems and facilities for the purchase, sale, etc. of certain commodities, such as fish, vegetables, fruits, soda-fountain supplies, molasses, etc., spices and relishes, coffee, teas, etc., nuts; flour, sugar and rice, cereals, grain; various miscellaneous articles, and grape juice, or from dealing in such commodities themselves and enjoining the individual defendants from owning voting stock in excess of 50% of the voting stock of any corporation dealing in such commodities; from conducting any retail meat markets; from owning any interest in public cold storage warehouses; from dealing in fresh milk and cream, or owning an interest in any corporation or firm dealing in them; and generally, from using any illegal trade practices.

The decree fixed the time within which the defendants should divest themselves of any interests that they might own in the different kinds of business prohibited by the decree, and further provided:

"That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

For convenience I shall hereafter refer to the government's original bill or petition as the "Bill", and to this decree as the "Decree."

In 1921, the American Wholesale Grocers Association and the National Wholesale Grocers Association were permitted to intervene for the limited purpose of being heard upon any proposal to modify the Decree.

In 1924, pursuant to a mandate of the Court of Appeals, the California Cooperative Canneries was permitted to intervene for the purpose of having the decree vacated, and on May 1, 1925 on motion of the Canneries the opera-

tion of the decree was suspended by an order of this Court until a full hearing on the merits. At the same time the Swift and Armour groups of defendants moved to vacate the Decree, on the ground that it was void, that this Court was without jurisdiction and that there were no findings of fact or admission as a basis for the Court's action. This motion was overruled, and when the case finally reached the Supreme Court of the United States, the consent decree was held to be valid (Swift & Company v. United States, 276 U. S. 311). Later the Supreme Court in United States [fol. 1631] v. California Cooperative Canneries, 279 U. S. 553 again affirmed the validity of the Decree and ordered that the intervention of the Canneries be disallowed and all obstacles to the enforcement of the Decree should be removed. On the mandate of that Court a decree was entered in this Court on July 24, 1929.

On August 10, 1929 the Armour and Swift groups filed petitions in this Court seeking certain modifications of the injunction. These petitions, however, were superseded by amended petitions filed by the same defendants on April 2, 1930.

In these amended petitions the Swift and Armour groups of defendants petition the Court for certain modifications of the Decree as stated in the Swift petition

"on account of conditions now existing and because of certain radical and revolutionary changes, which have occurred since its entry, in economic conditions, merchandising methods, statute law of the United States and the interpretations thereof, which make this decree unjust, unfair, inequitable and oppressive to those defendants, unnecessary and against the public interests."

And the petition prays

"that the Court will modify its said decree, entered under date of February 27, 1920, so that the parties defendant will be enabled, under such terms and conditions as the Court shall direct, (a) to own capital stock or other interests in public stockyards market companies or stockyard terminal railroads; (b) to use or permit others to use their distributive systems and facilities; (c) to manufacture, sell or deal in commodities specified in paragraphs

fourth and fifth of said decree; (d) to own and operate retail meat markets; (e) to own capital stock or other interests in public cold storage warehouses; (f) to engage in the fresh milk and cream business; and that these defendants be granted such other and further relief as the nature of the case may require and the Court may deem just and proper in the premises."

The other defendants have stated in open court through their counsel that while they are not seeking modification of the Decree they will consent to such modification as the Court may order, provided that it be made applicable to all the defendants.

In the first place it is contended by the interveners that the Court has no power to modify the Decree as prayed by the packer defendants upon the grounds that the Decree is final, and the Court has no power to modify a final decree after the expiration of the term at which it was entered; that it was entered by consent, and was a contract which the Court could not abrogate; that the provisions in the decree for modification could only apply when all the parties to it joined in the application. This power is, however, [fol. 1632] conceded by the government as stated in its brief:

"The decree is a judicial decree, and to be dealt with as such. The fact that it originated in a consent arrangement does not give any greater or less effect to the attitude of the Attorney General on the question of modification, than if the Decree was entered after litigation. The question whether there should be a modification is a judicial question to be decided on the law and the evidence. Arguments advanced for or against the application by any of the parties including the Government are to be weighed by the Court and given the same consideration, no more and no less, than they would if the Decree had followed litigation."

I agree with the government's position on this point, for a decree of injunction differs from a judgment at law, and while it is a final adjudication of the rights and equities of the parties at the time it is entered, the remedy by injunction is subject to modification upon equitable considerations which may thereafter arise due to subsequent

changes in conditions. And the reservations in the Decree itself evidently contemplated modifications in the different methods by which the chief ends of the Decree were to be carried out, nor were they dependent upon any joint action by all the parties to the Decree. Besides I do not think that the interveners have such a position in this case as to entitle them to prevent modifications by the Court, when the power to make them is conceded by the parties to the Decree.

There is no contention, however, that the Court has any power to go behind the Decree. This is not a proceeding to review the action of the Court in entering the Decree upon any ground of lack of jurisdiction in the Court or error in the Decree, or to raise questions that might be raised in a bill of review, or a bill to set aside the Decree for fraud, etc. The Decree is to be taken as valid and binding upon the parties, and the only ground upon which modification can be had, is that conditions have so changed since its entry as to render it inequitable to further enforce certain of its provisions.

The chief purposes of the Bill and Decree were to end the monopoly alleged to have been acquired by the defendants over certain commodities by which they controlled the supply and prices of the food supplies of the nation, and the Decree was intended to end that monopoly and to prevent any monopoly by the defendants in the future, and the specific injunctions in the Decree were means for the [fol. 1633] carrying out of that purpose.

A great deal of testimony has been taken, and there has been a sincere effort by all counsel to place before the Court every fact that might bear upon the issues. The case has been much shortened by the willingness of counsel to stipulate upon all uncontroverted facts, and in many instances upon the testimony of absent witnesses. No technical objections have been raised, and few of any kind at all, and counsel have conducted the trial of the case upon a very high plane.

It is conceded that there is today no monopoly in the meat packing industry. The parties have stipulated

"that the individuals, firms and corporations, engaged in the meat packing business in the United States, to the number shown or which may be shown by evidence in this case, owned and controlled independently of each other, are in

active competition with each other in the purchase of livestock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell."

The defendant packers are not engaged in the raising of livestock. Of that raised on farms a considerable amount is slaughtered where raised, part for home consumption and part sold at the nearest markets. Some are sold by direct shipment to various packers and shipped to their private yards at their plants, or at concentration points maintained by packers. Many are sold at the public livestock markets through commission men, or through cooperative marketing and shipping associations. These public livestock markets are under the control of the Secretary of Agriculture under the Packers and Stockyards Act of 1921, and there are now 72 of such stockyards, which are scattered throughout the country.

The purchasers at these yards are the packers themselves, producers who buy in order to further fatten the cattle and resell them, and speculators. Much direct buying is done by the defendant packers and this is especially true of hogs, of which in the year 1929, 40% was sold directly.

Since the date of the Decree, Armour & Company has absorbed the business of the defendant, Morris & Company, but in a proceeding under the Packers & Stockyards Act, the Secretary of Agriculture in 1925 held that competition had not been materially lessened by this acquisi- [fol. 1634] tion. The testimony is uncontradicted that the four present groups of defendants are independently owned and controlled and are in active competition in the purchase and sale of livestock and the sale of meat products.

The government contends, however, that the monopoly enjoined by the Decree was not of the packing business as a whole nor of foods as a whole but was limited to a monopoly of those commodities in interstate commerce, and that a monopoly of the latter may exist although a monopoly of the former be impossible. I think that this contention is correct, and if the latter be prevented, the former will be all the more difficult, as was said by the Supreme Court in Wolff v. Industrial Court, 262 U. S. 522:

"Given uninterrupted interstate commerce, the sources of food supply in Kansas are country wide, a short supply

is not likely, and the danger from local monopolistic control less than ever."

And the same situation exists in other states.

Some 75% of the population of the United States live east of the Mississippi, and some 75% of the nation's livestock is produced west of that river, so that 50% of that livestock must be transported in interstate commerce. The importance of preserving the freedom of that commerce is evident.

The packers who are engaged in interstate commerce make annual reports to the Packers & Stockyards Administrator. These increased in number from 514 in 1925 to 832 in 1929. The business of the defendant packers decreased in amount from 1920 to 1929 as shown by the following table:

	1920	1929	% decrease
Swift	$1,052,039,000	$1,035,263,000	1.59
Armour	1,260,280,000	1,004,196,000	20.32
Wilson	370,000,000	308,805,000	16.54
Cudahy	288,802,000	267,960,000	7.21

On the other hand, among their competitors the business of the East Side Packing Company increased from $3,750,000 to $22,000,000 or 486%, Adolph Gobel from $7,000,000 to $46,000,000 or 550%, John Morrell & Company from $51,000,000 to $100,000,000, nearly 100%, and many others show increase of like nature. While the volume of business done by these competitors was not nearly so large as that done by the defendants, these increases attest the nature and extent of the competition in this business.

[fol. 1635] As further evidence that no monopoly in foods can exist, the petitioners contend that there has been a revolutionary change in the methods of distribution from the producer to the consumer, and cite the great growth in chain stores of all kinds and that the competition of these chains has done them much injury. These chain stores are of different kinds, those under one ownership such as the Great Atlantic and Pacific Tea Company commonly known as the A & P, and voluntary chains not under one ownership. The latter are well defined by Mr. Pelz:

"A voluntary chain is a group of independently owned retailers who cooperate in joint buying, joint advertising,

or in joint or group control of the operations of their retail stores, in retail management."

There are three groups or classifications of voluntary chains. The most important group is that which is sponsored by one or more wholesale grocers. A wholesale grocer will gather together a group of retailers with whom he has an understanding to the effect that the retailers will to a large degree concentrate their purchases by buying from him and, in return for that consideration, will receive from the wholesaler a certain amount of merchandizing and managing assistance, which will enable the retailer to run his store more efficiently. The second group is what is commonly called a retailer-owned wholesaler, being a regular wholesale grocery company, owning a warehouse and doing a regular wholesale grocery business but having a capital stock owned entirely or largely by retail grocers. The third group is an organization in which a number of retail grocers combine for the purpose of group buying or group advertising but without ownership of wholesale grocery facilities.

All of these have increased both in numbers and volume of business since the entry of the Decree, and the number of these which sell fresh meats has increased in even greater proportion. In 1920 there were about 15,000 chain stores with some 1,200 fresh meat departments. In 1929 the number of chain stores had increased to 60,000, of which 15,800 sold fresh meats. In 1921 the A & P had 4,638 retail stores with sales of some two hundred and thirty million dollars with no fresh meat departments. In 1929, [fol. 1636] it had 15,000 stores with sales of over one billion dollars and of these stores 3,851 handled fresh meats. Kroger & Company, operating a chain of grocery stores, increased its sales of meat from six million dollars in 1920 to over forty million dollars in 1929, and also in the latter year did a meat packing business of over ten million dollars.

Of the regular grocery chains there were five in 1920 reporting to Moody's Manual with total sales of about four hundred million dollars. In 1929 there were twelve with sales of over two billion dollars, an increase of about 400%. The retail stores of the voluntary type have increased from about 6,500 in 1920 to over 29,000 in 1929, of which the wholesaler sponsored group composed 57½%. About 35%

of the total retail grocery business of the United States is done by the regular chain stores, and about 25% by the voluntary chains, a total of 60% done by chain stores of all kinds.

There has also been a wide increase in combinations among manufacturers of food products and also a corresponding increase in horizontal integration among wholesalers of food. Instances of these are the National Dairy Corporation engaged in the dairy business and the manufacture of sausages, with 350 retail food stores; the Borden Company, engaged in the manufacture of condensed and other varieties of milk, and of milk and cream products together with the purchase and distribution of farm products; the General Foods Corporation, handling 68 differently branded products, such as cereals, cocoa, syrup, coffee, paints and varnishes, and also engaged in meat packing, controlling the Birdseye quick freezing process for preserving meats, fish, etc.

Swift & Company and Armour & Company each had sales amounting to more than one billion dollars in 1920 and also in 1929. The business done by the other two defendants was much smaller. So far as volume of business is concerned, however, only the A & P approached the volume done by Armour & Company or by Swift & Company and the nature of the business of A & P can hardly be said to compete with that of the packers.

The petitioners claim, however, that their profits were much less proportionately than those of their competitors. The testimony shows that the aggregate sales of five of the larger food corporations, other than the defendants, increased from some two hundred million dollars in 1920, [fol. 1637] to over eight hundred and sixty millions in 1929, while their earning increased from less than six millions in 1920 to nearly sixty-three millions in 1929.

The profits in 1929 of Standard Brands were nearly 31% of its sales; of General Foods, over 15%, while those of Swift & Company were 1.26% of 1%; of Armour & Company .98 of 1%. The percentage of profits on net worth of Standards Brands was over 38%, of General Foods, over 40%, of Swift & Company, 5.78%, of Armour & Company, 3.54%, of Cudahy, 6.26% and of Wilson, 3.52%. In 1920 Armour & Company ranked eighth in earnings of all domestic food corporations, and Swift & Company, tenth, and

A & P, twenty-third. In 1929, A & P ranked first, General Foods Corporation, fifth, Standard Brands, seventh, Swift & Company, tenth and Armour & Company, thirteenth.

It is clear that none of the defendant packers is making large profits as compared with these other dealers in food. The greatest profits are not made in the slaughtering of livestock but in the processing of its products, and the instances above given of those who made the largest profits, etc., their slaughtering business was small in amount, and in fact only a few did any slaughtering at all. The profitable nature of the processing business is shown by the fact that 245 non-slaughtering packers reporters to the Packers & Stockyards Administration in 1929 earned net profits of nearly twenty-six million dollars on sales of about four hundred and forty-seven millions, while the four defendants earned less than twenty-eight million dollars on sales of over two and a half billions. The real comparison, I think, should be with other packers reporting to the Packers & Stockyards Administration. The percentage of earnings on net worth of the four defendants compared with that of all concerns reporting to the Packers & Stockyards Administration from 1925 to 1929 is shown by the following table:

Year	Concerns under P. & S. administration	Swift	Armour	Wilson	Cudahy
1925	6.87	7.12	5.04	2.75	8.48
1926	5.96	7.13	3.41	5.01	10.70
1927	3.94	5.47	.19	.24	5.91
1928	7.14	6.63	4.09	3.54	6.44
1929	6.45	5.78	3.54	3.52	6.26

[fol. 1638] The percentage of profits on sales in 1929 is as follows:

	Sales	Profits	Percentage of profits to sales
Defendants	$2,585,742,455.18	$27,945,776.75	1.09
Other Packers under P. & S. Administration	1,736,606,228.04	37,795,855.25	2.17

So that under any method of comparison it does appear that the net profits of the defendants are small as compared with that of their competitors. One usual concomitant of a monopoly, vast profits in proportion to its business, does

not exist on the part of any of the defendants. And as further evidence of this it appears that the defendant, Wilson & Company, became a bankrupt in 1924, and had to be reorganized.

The petitioners lay great stress upon the buying power of these large chain stores; that while in the buying of cattle, each head bears its own price and there is no reduction in price due to the purchase in quantity; in the sale of their products, the packers are confronted with purchasers who buy in such quantities that the packers are compelled to sell to them at greatly reduced prices; that they must always be prepared to make deliveries to these purchasers, and there is the continual danger that they may lose at any time one of these customers and be left with a large stock of perishable meats on hand to be held or sold at a loss.

I think that the petitioners exaggerate these dangers. The chains do a very small part of the slaughtering business, and are themselves largely dependent upon the petitioners for their supplies. There is constant and keen competition, and I do not see that the size of the chains give them any unfair advantages over the packers. The imminent development of the quick freezing process will largely do away with the necessity of any immediate dis-[fol. 1639] position of perishable products.

There are some rather singular facts as to the profits of Swift and of Armour, which are not explained. Armour's profits have varied largely from year to year and have not followed inversely the rise of the chain stores. Swift & Company's profits have exceeded Armour & Company's upon substantially the same amount of business. Whether these variations may be due to differences in the success of their foreign business, or to difference in skill in management does not appear, and the failure to account for this largely weakens the argument of the petitioners based upon their small returns in business. I think that there has been a failure to make a full disclosure of the facts in this respect. Swift & Company has paid dividends regularly for forty-four years and from 1920 to 1929 at the rate of eight per cent and during the same time has added to its surplus and reserve over sixteen million dollars. The percentage in profits of the Cudahy Packing Company has exceeded Swift's during the same period.

On the whole, therefore, I do not think that the claim of the petitioners that the development of the chain stores has caused any great loss in their profits has been established.

[fol. 1640] The petitioners, Swift & Company and Armour & Company, together control over 54% of the output of all packers engaged in interstate commerce, and all the defendants combined control over 70% of that business so that, if the four defendant groups should act together under any agreement or combination, they would unquestionably be able to control the greater part of this interstate business and this would be the case even if Swift & Company and Armour & Company alone should combine. The government contends that this power, due to their combine size, would constitute a monopoly. The statute, of course, does not contemplate a monopoly in its original meaning—control of the entire business—but a monopoly evidently exists under the statute whenever any one person or a combination of persons acquires such a part of the business or trade in interstate commerce in any commodity, as to enable them to fix prices, stifle competition, or unreasonably restrain that trade, and makes use of that power for those purposes.

That size alone, however, is not an offense under the act was held by the Supreme Court in the Steel Case, in 251 U. S. 429, where that Court said,

"The corporation is undoubtedly of an impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. But we must adhere to the law and the law does not make mere size an offense, or the existence of unexerted power an offense."

But in the instant case no one of the defendant groups has anything like a control of the business. The business of each is far less than that of its combined competitors. The great weight of the testimony is that no combination or agreement in restraint of trade exists between them. There is some testimony as to certain sporadic cases of unfair practices, and fixing of prices. There were certain instances in which Swift and Armour in competition with some of their competitors engaged in the practice of following each other's trucks to ascertain the location of their customers, and paid bonuses and large prices to get them

for themselves, and they finally agreed upon an allocation of customers and fixing of prices. It does not appear that [fol. 1641] the acts of Armour and of Swift were any worse than those of their competitors, nor that the final agreements were forced upon the others by Armour and Swift, but were for the benefit of all. There is also testimony as to threats of cutting prices made in 1930 by defendant's representatives to a competitor in Texas; that Wilson, Armour and Swift were working under an agreement in Oklahoma as to minimum prices to be obtained on fresh pork; that in certain territories salesmen of Armour, Swift, Wilson and other packers since the summer of 1929 received weekly confidential lists of identical minimum prices; that during the same time Armour & Company induced the Vernon Meat Company of Vernon, Texas, to join with them and others for the observance of minimum prices to their retail customers, the prices being furnished unsigned in a plain envelope, marked "strictly private." While the evidence is conflicting on these points, I am inclined to think that these charges are substantially true, but there is no evidence that the officials in the main offices of the defendants had any knowledge of these practices but on the other hand they had forbidden any agreements or arrangements to fix prices. In fact the prices of the different defendants did not coincide. Armour and Swift, in 1929, endeavoured to put into effect what was known as a "service-at-cost" plan of paying for butterfat, by which each seller of milk paid a fixed charge for the expense of measuring the amount of butterfat in his milk, and in order to force this upon their competitors, advanced the price of butterfat, while the price of butter was not affected. They failed in their attempt, and their failure is a significant fact in determining their ability or inability to create a monopoly.

These defendants employ over 100,000 employees; Armour and Swift do each an annual business of over one billion dollars, and have innumerable competitors throughout the country. It would seem that these competitors would be anxious to produce evidence of every instance of unfair competition or practices by the defendants, but these are the only instances of which any evidence has [fol. 1642] been offered. On the contrary numerous com-

petitors have testified to the keen but fair competition existing in the meat packing business.

As to this, however, the argument is made that it is not incumbent upon the government to establish the allegations of its original petition in the same way as if the case were being heard for the first time on its merits, but that it can rely upon the Decree, and that it would be an intolerable burden to have to prove its entire case whenever a defendant sought to modify a final decree. This is true and the burden is clearly upon the defendants to show clearly that there have been such changes in conditions as to warrant a modification. But the fact remains that it was open to the interveners as well as to the government to produce testimony of other similar occurrences if such existed. The government too at the outset read a letter from the Attorney General to the President of the Senate dated July 11, 1930, in which he said:

"It is my intention to present to the court every justifiable argument and fact which tends to the conclusion that the decree should not be modified. I have no doubt that those who are interested in obtaining modification will present to the court all the evidence and argument which tend to support their position; and in this way it is believed the facts relevant to the determination of this important matter can most clearly and expeditiously be presented to the Court."

I think, therefore, that the stipulation as to competition among the packers was fully justified; that the same conclusion applies also to interstate commerce in the packing business; that there exists no real combination or agreements in restraint of interstate commerce between the defendant packers or any of them, and no monopoly nor unfair competition or agreements in restraint of trade, save in the sporadic instances mentioned, either in interstate commerce or as a whole.

The petitioning defendants claim that there has also been a radical change in their position with reference to public stockyards. That instead of controlling them as alleged in the Bill, these stockyards are now under the control of the Department of Agriculture by virtue of the Packers and Stockyards Act of 1921. This act forbids

[fol. 1643] unjust, unreasonable or discriminatory charges, regulations or practices. It requires all changes in charges to be made public, and they are made subject to the approval of the Secretary, who may himself fix the rates or charges, and who is empowered upon investigation and hearing to make awards of damages to the parties injured. This, of course, is a real change in conditions and one which necessarily would greatly limit the power of the defendants to acquire a monopoly.

The actual control by the Secretary is shown by the testimony of Dr. Frank W. Miller, Assistant Chief of the Packers and Stockyards Administration when he says:

"The packer buyer, of course, is subject to the same supervision, observation, and practically daily contact by the Bureau's supervisors on the various stockyards as are all other classes of buyers and registrants engaged in the business at the market. If there are any complaints regarding the methods of buying, regarding competition, regarding unfair tactics brought to the attention of the supervisor by the sellers on the market or by any producer or shipper, the action of these buyers is promptly investigated and all of the facts that can be obtained, and reports made to the bureau."

The terminal railroads used in connection with the stockyards are largely regulated by the Interstate Commerce Commission.

Another means alleged in the Bill by which the petitioners were enabled to further their efforts to acquire a monopoly, was that by their control of the stockyards and the adjacent facilities they had "peculiar and exclusive access to information concerning the receipts and sale of livestock, its disposition and dissemination of information to the producer." No such exclusive information exists today. The Bureau of Agricultural Economics, a branch of the Department of Agriculture, daily collects and disseminates information of the production and marketing of livestock and other agricultural products. It operates over 10,000 miles of leased wires with 70 telegraph operators at 48 separate offices. Information is sent out daily as to prices, both of sales and of bids and offers, including the estimated receipts of the following day. Market in-

[fol. 1644] formation is disseminated by radio several times during the day. There is no doubt that so far as any knowledge of prices or market conditions are concerned, petitioners have no peculiar advantage over their competitors of those who deal on the stockyards.

The Bill also charged that in addition to their numerous branch houses, by means of refrigerator and route or peddler cars the defendant packers gained advantages over their competitors by the use of these facilities, intended primarily for the sale of meats, for the distribution of other commodities with comparatively little increase in their overhead. As defined by the Interstate Commerce Commission (Swift & Company v. A. C. & Y. Ry. Co., decided July 14, 1930):

"Peddler cars are refrigerator cars owned, precooled, loaded and iced by meat packers—. Succinctly stated a peddler car is an instrumentality by which fresh meats, packing house products, and certain other commodities more or less associated with meat packing industries are shipped from the packers' operating base points, the car or cars after arrival at first destination being hauled in local freight trains, moving over scheduled routes and stopped at various stations for unloading and distribution in less than carloads to purchasers or agents of the producers."

A certain minimum weight is required by the railroad companies in each of these cars, so that where, for instance, the minimum weight required is 10,000 pounds and only 8,000 pounds are put into the car by the shipper he will nevertheless have to pay freight charges on 10,000 pounds. The result, therefore, is that where the packer has only 8,000 pounds of meat to be shipped in one of these cars and he adds enough of other commodities to bring up the weight of the whole to the minimum, while he has to pay for the total amount shipped, he is enabled to ship the additional commodities without additional cost. This, it is claimed, gives the packer whose business is large enough for him to make use of these cars, a great advantage over his competitors in other lines of business. He either pays less freight for the shipment of his meat than he would

otherwise do, or he is enabled to ship his other commodities almost without expense.

[fol. 1645] As a transportation question the Interstate Commerce Commission held on June 22, 1921 in cases in which the interveners in this case were parties, involving the use by the packer defendants of their refrigerator cars:

"Upon consideration of all the facts of record we find that the practices of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch house cars is not shown to result in undue prejudice to complainants or unduly to prefer the packers."

So far as the question of ownership of refrigerator cars by the defendants is involved, it is conceded that the supply of these cars is ample, and the private ownership of such cars has never been forbidden by law or by the Interstate Commerce Commission.

The great development in recent years in hard surfaced and in better roads everywhere has greatly diminished any advantage in the ownership or use of refrigerator cars. The automobile truck has become the chief method of delivery of food products up to distances of from seventy-five miles to as much as one hundred and fifty miles in some instances. This has, of course, increased the power of the smaller packer to compete with the larger packers.

A great change in methods of distribution of meat and meat products is being brought about too by what is known as the quick freezing process. Meat is subjected to temperatures of from 30 degrees to 40 degrees below zero (Fa-renheit), and when thus frozen, the texture and flavor of the commodity is unimpaired, and it can be preserved in this condition for months. By this method meat can be cut up by the packer and prepared in packages for the retail markets and sold in the original packages. One great advantage that the local packer now has will end, for there will be no advantage in appearance or flavor in freshly slaughtered meats. Then too the packer can more easily keep his products, and not be forced to dump them upon the market at unfavorable times. He can also, by the use of his brands, make use of the increasing public demand for articles which are so branded that the consumer can know that he has tested and found satisfactory before. The best known of these quick

freezing processes is the Birdseye owned by the General [fol. 1646] Foods Corporation and that company has had so much faith in its success as to pay twenty-two million dollars for the patent. But this is not the only quick freezing process. Mr. White, President of Armour & Company, testified, in referring to the progress that his company had made in the quick freezing process.

"The development so far made would give us ample satisfaction to the point where we could meet the competition of any food that is now prepared in any method or by any method that is now on the market, when and if we want to do it."

And Swift & Company, to meet any competition in this line, are installing apparatus for preserving meats at a much lower temperature than formerly.

Upon the whole case I am of the opinion that in many respects there have been great changes in the methods of food distribution and in the situation of those engaged in the packing industry since the date of the Decree. The extent of the relief, if any, that should be given to the petitioners is a difficult question. Certain provisions of the Decree enjoined the defendants from acts, which whether they were illegal in the strict sense or not, at the time of the Decree, were such as to give them unfair advantages over their competitors. These arose from their ownership or control of public stockyards, terminal railroads and market journals. While the Packers and Stockyards Act, the control of the terminal railroads by the Interstate Commerce Commission and the present widespread and prompt dissemination of market news has, to a considerable extent, diminished the danger arising from the petitioners' ownership of these facilities, I think that it would be unwise to modify the Decree in these respects. There are many opportunities for secret preferences in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers. It is probable too that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the Decree. And here I might mention the question of "reciprocal buying," a practice by which a shipper ships his goods over that railroad which

buys his products. I consider this an element of danger [fol. 1647] with opportunities for secret rebates and preferences, but the government admits that while this practice on the part of petitioners shows a tendency to unfair trade practices, it is not illegal and by no means confined to the petitioners. The government does not seek any additional injunction in this respect.

The use of refrigerator and peddler cars and the dealing in commodities other than meats, are not, of course, illegal in themselves, nor are they sinister in their nature nor the subjects of any secret advantages. It is simply a question whether it is inequitable to further continue the provisions of the Decree in these respects. I do not think that in order to show a right to modify the injunction in any one respect, the changes in conditions which would justify such a modification should be limited to those bearing particularly upon that one question, but the entire change of conditions in the distribution of foods, those brought about by economic changes and practices, those brought about by the changes in the conditions and practices of the petitioners, and changes in the statutes and laws must be considered, anf if by reason of those changes, any provision of the Decree can be modified without danger of monopoly, or the probability of acts in restraint of trade or unfair practices on the part of the petitioners, then the Decree should be modified.

The gravest source of danger alleged in the Bill was that with reference to the control by the defendants of the stockyards, terminal railroads and market newspapers, and the most reprehensible practices charged against the packers were those connected with their operation of those facilities and their combinations and consequent conduct in restraint of trade, fixing prices and acts of unfair competition, by means of which they were acquiring a monopoly. Today the combination no longer exists; no one alone of the packers is of sufficient size to constitute a monopoly, even if it tried to do so; their control of the public facilities mentioned is much weakened, and if the [fol. 1648] injunction as to those matters remains unchanged, they can not be made the basis of a monopoly. As to the peddler cars it is an extreme measure, unless

absolutely necessary, to prevent anyone from making an economic use of his facilities. The use by the packers of vacant places in the peddler cars and in their warehouses, not used for meats, by other commodities is sound as an economic and business proposition. In addition to this there has been a great increase in the number of combination food stores, those retailing both meats and groceries. This is due partly to the increased use of the automobile in which the housewife is enabled to carry her purchases, and she prefers to get all her food supplies at one place, due probably in part to the trouble and difficulty of parking her car. There will be quite a saving to the petitioners if the same salesman, when calling upon the retailer, could sell him both meats and other food products, or if he did not desire one, could sell him the other. With other restraints remaining in force and fortified in some instances by government inspection and control, with the increased competition of other packers, with the growth and purchasing power of the chains of all kinds, with the widespread dissemination of market news, I see no danger of a monopoly on the part of the defendants arising from the use of refrigerator cars and from dealing in commodities other than meats.

As to retailing I think the situation is different. The control by the defendants of the great amount of interstate commerce in meats and other articles from the producer to the consumer would probably result in the almost complete annihilation of the independent retail grocer, already a minority in volume of business. The petitioners admit that if they go into the retail business they must buy out many now in the business, they will necessarily compete with other retailers, now their customers, and can by the elimination of salesmen and in other ways, reduce the cost of their products to their own retail stores. Even if they should not go into the business of retailing, if they had the power to do so, there is a real danger of the misuse of that [fol. 1649] power. This is shown by the testimony of the president of Armour & Company when he said:

"The very fact that we had the privilege or opportunity of going into the retail business without restriction might remove the necessity of our ever having to do it.

Q. In what way might it do that?

A, Well, if you have somebody in a situation where he can never get up to you, you have an advantage over him, * * *

Q. Could you illustrate, by some description of a definite line of procedure, as to how the mere possession of this liberty would give you an advantage, or enable you to act advantageously without actually using it?

A. I can conceive of a situation developing around our business where we have a customer of very large proportions, with whom we are dealing in millions of dollars of business. I can conceive of his buyer and my salesman getting into a situation of antagonism one with the other, and of getting notice that that man would not buy any more products from this great house of Armour & Company, because of some little incidental thing. I could not conceive of that ever happening if that big buyer thought that there was an opportunity, because he or his people refused us his business, for us to go into the retail business. I can not conceive that he would reach that conclusion. I think he would find a way to do business with us."

Whether such complete integration in merchandizing from the producer to the consumer would produce better conditions as a whole is an economic question which is not for the Court to decide. The policy of Congress as shown by the statutes enacted by it and as interpreted by the Supreme Court is to preserve and stimulate competition, and to permit the defendants to engage in the retailing of their own products would, in my opinion, have the opposite result.

The Decree will therefore be modified so as to permit the defendant packers to manufacture, sell and deal in the commodities specified in paragraphs fourth and fifth of the Decree, and referred to in this case as unrelated lines, and to use or permit others to use the distribution facilities of the defendants in handling these unrelated lines, but in all other respects the Decree will remain in full force and effect, and the defendants required to comply promptly with the Decree, in every respect in which they have not heretofore complied with it.

Jennings Bailey, Justice.

[fol. 1650] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 37623

UNITED STATES OF AMERICA

v.

SWIFT & COMPANY ET AL.

ORDER MODIFYING THE CONSENT DECREE OF FEBRUARY 27, 1920—Filed January 31, 1931

This cause came on to be further heard upon the petitions of the defendants Swift and Company and Armour and Company for modification in specified particulars of the decree entered in this cause on February 27, 1920, and the answer to said petitions filed by the plaintiff, the United States of America, and the American Wholesale Grocers Association and the National Wholesale Grocers Association, interveners herein; thereupon evidence, oral and documentary, was taken in open court and the case was submitted on oral arguments and written briefs by the petitioning defendants, the plaintiff and the interveners; and having been considered by the Court and the Court having concluded that the evidence establishes that conditions have so changed since the entry of the said decree as to render it inequitable further to enforce certain of its provisions and that justice and equity warrant and require the modifying of said decree in part, and all of the defendants by their counsel having appeared in open court and consented to such modification of said decree as this Court after hearing shall find just and equitable, it is this 31st day of January, 1931;

Ordered, adjudged, and decreed:

First. That paragraph Third of said consent decree be and hereby is amended to read as follows:

"Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their of-
[fol. 1651] ficers, directors, agents or servants, through any device or arrangement whatsoever, using or permitting any other person, firm or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner

for the sale or distribution at retail of any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted therein."

Second. That the introductory portion of paragraph Fourth of said consent decree, preceding the enumeration of commodities, be and is hereby amended to read as follows:

"Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents or servants, engaging in or carrying on, the business of selling or distributing at retail, any of the following products or commodities, except when so handled; (1) in the operation of their restaurants, laundries, plant stores, or other conveniences primarily for the benefit of their employees; or (2) in combination with meats, to wit:";

that the enumeration of commodities set fourth in sub-sections 1 to 13 of said paragraph Fourth be and remain the same as heretofore provided; but that the closing paragraph of said paragraph Fourth be and is hereby amended to read as follows:

"And the corporation defendants and each of them be, and they are hereby further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves, or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any corporation, firm or association, except common carriers, which is in the business, in the United States, of selling or distributing at retail any of the above-described products or commodities."

Third. That paragraph Fifth of said consent decree be and the same is hereby amended, so that the words at the end of the introductory portion thereof and just preceding the enumeration of commodities, which now read— "in the business of manufacturing, jobbing, selling, transporting, or distributing, or otherwise dealing in any of the following products or commodities, to wit:" shall read instead "in the business of selling or distributing at retail any of the following products or commodities, to wit:";

that the specification of commodities following in subparagraphs 1 to 10 thereafter be and remain the same as [fol. 1652] heretofore provided; but that the concluding portion of said paragraph Fifth, beginning with the words "And further perpetually enjoining," be and the same is hereby vacated in its entirety;

Fourth. That paragraph Twelfth of said consent decree be and the same is hereby vacated in its entirety;

Fifth. That paragraph Seventeenth of said consent decree be and the same is hereby amended, by striking therefrom the following words:

"or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems."

Sixth. That as so amended, said consent decree of February 27, 1920, shall be and remain in full force and effect;

Seventh. That defendants be and are hereby given an extension of time of one year from the date hereof in which to complete their disposition, in accordance with the terms of said consent decree, of any properties or interests now held contrary to the provisions of said decree;

Eighth. That jurisdiction of this cause be and is hereby further retained by this Court for the purposes provided in paragraph Eighteenth of said consent decree.

By the Court:

Jennings Bailey, Justice.

[fol. 1653] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER CORRECTING DECREE OF JANUARY 31, 1931—Filed February 26, 1931

This cause came on for further hearing on application by the United States to correct an error in the final decree of this Court entered January 31, 1931; and it appearing

to the Court that such an error was inadvertently made in drafting the language of paragraph Second of said decree, and all the parties by their counsel having consented to the correction thereof, it is this 26 day of February, 1931, hereby

Ordered that the words "sub-sections 1 to 13 of said paragraph Fourth," appearing near the middle of Paragraph Second of said decree be corrected to read, "sub-sections 1 to 14 of said paragraph Fourth."

Jennings Bailey, Justice.

Consented to by:

Armour and Company et al., Swift and Company et al. Frank J. Hogan, Counsel. N. T. H. American Wholesale Grocers Association. Edgar Watkins, Counsel. National Wholesale Grocers Association. Breed, Abbott, Morgan, Counsel.

[fol. 1654] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITIONING DEFENDANTS' REQUESTS FOR I. FINDINGS OF FACT; II. CONCLUSIONS OF LAW—Filed Dec. 4, 1931, as of Jan. 31, 1931

I

Requests for Findings of Fact

Defendants Swift & Company, and their associates, and Armour & Company, and their associates, petitioners herein for modification of this Court's decree entered in this cause February 27, 1920, respectfully request the Court to make the following findings of fact:

[fol. 1655] 1. That defendants Swift & Company and its subsidiaries, Armour & Company and its subsidiaries, Cudahy Packing Company and its subsidiaries, and Wilson & Company and its subsidiaries, considered as four entities, are each owned and controlled independently of each other.

2. That there now exists in the meat packing industry in the United States active competition among a large

number of individuals, firms and corporations, including defendants herein, in the purchase of live stock and in the selling of the products thereof.

3. That there exist no contracts, agreements, understandings, combinations or conspiracies among the defendants, or between any two of them, in restraint of trade or commerce among the States; no fixing of prices to be paid by them for live stock, raw materials, or products for resale, bought by defendants or any of them; no fixing of prices at which defendants or any of them shall sell products dealt in by any of them; and no apportioning among defendants, or between any two of them, of territory in which, or customers with whom, they, or any of them, shall conduct business.

4. That defendants in purchasing live stock from producers and their representatives are in keen and active competition with each other, and with many other buyers of live stock, and do not subject the sellers to any unfair trade practices and do treat them fairly; and that these fair and competitive conditions apply to purchases of live stock made by defendants (a) at public stockyard markets, (b) at their own private stockyards, and (c) when buying [fol. 1656] directly from the producer, or his agent, at or near places of production.

5. That defendants in the sale of their products are in keen and active competition with each other and with numerous others selling similar products and their competitive practices in the sale of their products are fair and lawful.

6. That in the transaction of their business defendants' treatment of customers is fair and lawful.

7. That in the operation of their business defendants accord to employees fair and considerate treatment and maintain harmonious relations with their employees.

8. That during the ten years from 1920 to 1929, inclusive, no one of the defendants' percentage of the total slaughter of livestock in the United States exceeded 16.05 per cent.

9. That during the ten-year period from 1920 to 1929, inclusive, no one of the defendants' percentage of the total

meat and lard production in the United States exceeded 16.2 per cent.

10. That none of the defendants has a monopoly in the meat packing industry.

11. That neither the four defendants, nor any two of them, are combined to monopolize or to attempt to monopolize the meat packing industry.

12. That each of the defendants could materially reduce the cost of distributing meats and other livestock products [fol. 1657] if it engaged in selling, dealing in and transporting foodstuffs other than, and in addition to, meat food products.

13. That each of the defendants, by dealing in foodstuffs other than, and in addition to, meat food products, would be enabled to so distribute its overhead and sales costs as to effect economies in the distribution of both meats and other live stock products and of non-meat-food products.

14. That during the ten years, 1920 to 1930, food manufacturing and distributing concerns, other than defendants, have greatly grown in volume of business, financial strength, and earning power; that there has been a marked growth (a) in the integration of concerns dealing in various lines of foods into single manufacturing, selling and distributing organizations; (b) in the integration by food concerns in the handling of products from manufacturers to consumers; and (c) in the diversification of products handled by manufacturers, wholesalers and retailers; and the trend is toward further integration and diversification.

15. That since 1920 conditions have materially changed in the methods of marketing food products by reason of (a) a great increase in the number of regularly organized retail chain food store companies; (b) the grouping together for cooperative and concerted action of large numbers of wholesale and retail food establishments in what are called voluntary chains; (c) an increasing number of combination food wholesaling and retailing establishments with the resulting reduction in such line establish- [fol. 1658] ments as grocery stores, vegetable and fruit stores, and meat markets; (d) the combining with grocery

establishments of departments or markets for the selling of meats; and (e) the engaging by concerns retailing foods on large scale in the functions usual to wholesale and branch house distribution, and in the functions of manufacturing and processing meat products and other foods.

16. That the changes in business and marketing methods set forth in the last immediately preceding finding have adversely affected the doing of business by defendants through their branch house and car route distributing systems, adding to the cost thereof, and reducing profits and causing losses.

17. That under present conditions the petitioning defendants are unable to earn a fair margin of profit on sales made by them or a fair return on the capital invested in their respective corporations.

18. That if defendants were engaged in handling food products additional to products they are now dealing in, there is no probability that they could or would acquire a monopoly of, or control the quantity and prices of, the foods produced and/or consumed in the United States.

19. That there is keen and active competition throughout the general food industry in the United States in manufacturing, wholesaling, and retailing.

20. That there is no monopoly now existing in the United States in the manufacture, preparation, or sale of foods. Food is now produced in greater volume and variety than ever before.

[fol. 1659] 21. That since 1920 conditions have so materially changed in the methods of handling so-called dairy products, including milk, cream, butter and cheese, that the most efficient and economical handling of such products can now be achieved by dealers handling all of them; that the business of defendants in these products is adversely affected and losses are incurred by reason of their inability to deal in all of them; that no unfair advantage would accrue to defendants in permitting them to deal in fresh milk and cream in addition to butter, cheese, eggs and poultry.

22. That there are now such strongly organized and financed companies engaged in the dairy products indus-

try, and the percentages of the products of that industry handled by each of the defendant corporations are so comparatively small, that there is no danger of monopoly therein by any of the defendants.

23. That during the past ten years retailing organizations in groceries, vegetables, fruits and meat lines have greatly increased in volume of business, financial strength, earning power, and buying power, have widely extended their fields of operation, and have diversified the products handled.

24. That there is no danger now that the entry of any of the defendants into the retail field and the conducting therein by any of them of retail meat markets or retail combination food stores would result in monopoly or unreasonable restraint of trade in the retail food industry.

[fol. 1660] 25. That during the past ten years (a) the increase in the number of railroad refrigerator cars, not owned by defendants, available to all who need to use such equipment in their businesses, has resulted in there now being ample equipment of that character for any and all who need them; (b) the increase in the use of motor trucks for the transportation of food products and the extending of the areas of their operation by reason of the great increase in good roads, and the increase in the transporting by motor trucks of products by packers competing with defendants and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants of any advantage which the ownership of refrigerator cars formerly gave them, and none of the defendants enjoys any undue preference or advantage by reason of its ownership of refrigerator cars.

26. That defendants do not unfairly control public stockyards and market operations, thereon or indulge in unfair practices at stockyards, whether public or private; and that the administration of the Packers and Stockyards Act, 1921, deprives any of the defendants of the power to unfairly control public stockyard market operations, to charge unfair or unreasonable rates for services at public stockyard markets, to discriminate in the allotment of facilities at public stockyard markets, or, by reason of the ownership of shares of stock in public stockyard market companies, to obtain

any of the undue advantages alleged in the original petition in this case.

27. That none of the defendants has or can obtain control of the sources or dissemination of market and trade [fol. 1661] news respecting the live stock, the meat, or the general food markets.

28. That full and complete, prompt and unbiased market reports of all information usual and necessary for the guidance of live stock producers, agriculturists, manufacturers, wholesalers and retailers, in all lines of the food industry in the United States, are now available to all interested in such reports.

29. That conditions in the methods of doing business in the food industry in the United States have changed greatly since 1920.

30. All parties consenting to the Decree entered herein February 27, 1920, concede the jurisdiction and power of this Court to modify said Decree.

II

Requests for Conclusions of Law

The petitioning defendants respectfully request the Court to make the following conclusions of law:

1. None of the defendants is now engaged in violating, attempting, or threatening to violate any of the provisions of the anti-trust laws of the United States.

2. This Court has power in virtue of the provisions of Paragraph Eighteenth of its Decree entered herein February 27, 1920, to modify said Decree in such respects as the Court finds justified in the public interest and in justice to the defendants.

[fol. 1662] 3. This court has inherent power to modify its said injunctive decree in such respects as the Court finds justified in the public interest and in justice to the defendants.

4. The consent of the United States and all other original parties who consented to the entry of said Decree is not necessary to the exercise of the Court's aforementioned power to modify.

5. The provisions of Paragraph Eighteenth of said Decree constitute consent by all of the parties that the Court may entertain at any time any application for modification of the Decree and enter its order thereon.

6. Upon the facts pleaded and proved in the proceedings herein seeking modification of the injunctions of the Decree of February 27, 1920, the Court concludes that modification should be made in said Decree, as hereinafter ordered, because (a) the ends of justice would be served by such modification; (b) changes in the statutory law and in judicial construction given the Sherman Anti-Trust Act, since the entry of the Decree, justify modification; (c) changed conditions in the food industry during the past ten years justify modification in the public interest; and (d) changes in the controlling facts on which the injunctions of the Decree rested justify modification in justice to defendants.

7. The Decree of this Court entered in this cause on February 27, 1920, should be modified by an order relieving the defendants, and each of them, from the injunctions of that Decree against (a) the ownership of capital stock or [fol. 1663] other interest in public stockyard market companies or stockyard terminal railroads; (b) the manufacturing, transporting, selling or dealing in commodities specified in Paragraphs Fourth and Fifth of the Decree; (c) the using or permitting others to use the distributive systems and other facilities for the handling of the commodities specified in Paragraphs Fourth and Fifth of said Decree; (d) the ownership or operation of retail meat markets; (e) the engaging in the fresh milk and cream business; and (f) the ownership of stock or other interest in public cold storage warehouses.

The foregoing requests are—
Respectfully submitted.

Swift & Company et al., by Henry Veeder, Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Swift & Co. et al. Armour & Company et all., by Charles J. Faulkner, Jr., Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Armour & Co. et al.

Washington, D. C., December 1, 1930.

[fol. 1664] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity No. 37623

UNITED STATES OF AMERICA, Plaintiff,

v.

SWIFT AND COMPANY, ET AL., Defendants

REQUEST FOR FINDINGS OF FACT—Filed Dec. 4, 1931, as of Jan. 31, 1931.

For the Court's convenience in case it should now deem it desirable to make findings of facts separately from its opinion hereinbefore rendered, the Government submits the following separate statement of facts referred to in its Brief and respectfully asks the Court so to find.

1. Meat packing embraces both slaughtering and processing. Processors who do not slaughter must either buy the livestock on the hoof and have it custom-slaughtered (which is done to a negligible extent only), or buy carcasses and other wholesale cuts from slaughtering packers. In [fol. 1665] doing the latter, they are customers of such packers and dependent upon them for their raw materials (p.11).*

2. The participation of chain stores in the meat packing business, both slaughtering and processing, does not exceed $30,000,000 annual packing plant output, or less than 1% of the total annual output of all meat packing establishments operating under federal inspection. So far as such participation includes slaughtering, it is practically limited to the Kroger Grocery and Bakery Company, with a yearly output of about $10,000,000. Chain stores do not otherwise compete with petitioners, as the latter do not retail their own products (pp.12-13).

3. There are approximately 900 centrally owned chain store systems in the United States competing with each

*Page references to the Government's Brief are inserted throughout these requested findings for the Court's more ready reference.

other in the purchase of the products they handle. They embrace a total of 60,000 constituent stores, with estimated total sales of $3,500,000,000 annually. Of these, but 15,800 stores have meat departments (p. 14).

4. Combined meat sales of all centrally owned chain stores do not exceed $380,000,000 annually, or not over 10% of the total meat sales of the United States through all retailing outlets (p. 15).

5. The combined meat sales of the nine largest chain stores systems, having a total of 35,140 stores, approximate $250,000,000 annually, or not over 6.6% of the total retail meat sales of the United States (pp. 15-16).

6. The total food bill of the United States is estimated at $24,000,000,000 annually, of which $3,000,000,000 is consumed at source of production, $5,250,000,000 is sold through hotels, restaurants, and similar outlets, and $15,-[fol. 1666] 750,000,000 is sold through retail food and provision stores (p. 14).

7. The total retail grocery business is in sales volume about $10,000,000,000 annually. The total retail meat sales through all outlets are about $4,900,000,000, of which about $3,800,000,000 is sold through retail marketing outlets, the remainder being through hotels, restaurants, and similar outlets (pp. 14-15).

8. About 25% of all centrally owned chain stores are combination stores having meat and grocery departments, and the meat sales of such combination stores average about 25% of their total sales. The normal retail margin of meats handled by centrally owned chain stores, i. e., difference between wholesaling cost and retailing price, averages about 20% of the retailing price (pp. 14-16).

9. The total sales of Swift and Company to chain store customers in the year 1929 represented 7% of their total sales to all customers and 8.9% of their total sales of edible products; while their total sales to their largest single customer represented 2% of their total sales and 2.5% of their total edible sales for the same year (p. 19).

10. The total sales of Armour and Company to chain store customers for the year 1929 represented 8.3% of

their total sales, and 10% of their total edible sales; while their total sales to their largest single customer represented 2.8% of their total sales, and 3.4% of their total edible sales (p. 19).

11. About 75% of such purchases by chain stores are centrally directed and controlled, while the remaining 25% is left to the option and discretion of local store managers (p. 20).

12. Great Atlantic and Pacific Tea Company, the largest chain store system, conducts its centrally directed buying [fol. 1667] through six executive division-, each of which exercises complete freedom in such buying, without direction or interference from central executive headquarters (p. 20).

13. Meat packing concerns other than the defendants frequently sell as much as 10% of their total output to chain stores, and 5% to their largest respective chain store customers, and do not consider such business in any way undesirable (pp. 20-21).

14. Leading fruit and vegetable canning concerns sell 25% or more of their total product to chain stores, and 10% to 18% to single chain store customers (p. 21).

15. The use of private and nationally advertised brands has been greatly extended to the last ten years, but is not well adapted and is little used in connection with the sale of fresh meats (p. 22).

16. The use of leaders (i.e., temporary offerings of selected commodities at reduced prices to attract trade to the store, with the expectation that it will then purchase other commodities at regular prices) is practically universal in the retail food trade. Branded and non-perishable articles are usually selected as leaders, and articles selected as leaders are offered as such for from two days to a week at a time—rarely longer (p. 22).

17. Defendants and other standard meat packers have for many years sold their products, for most part, directly to retailers, and to but slight extent to jobbers, wholesalers, or other middlemen (p. 23).

18. Voluntary chains consist of collections of separately owned retail stores acting together under various plans for the cooperative purchase of at least part of their wholesale requirements. Such centrally controlled buying involves about 25% of their sales, but is little practiced in the purchase of meats, and in fresh meats not at all, being ill suited to such purchases, because of the perishability, [fol. 1668] non-standard grades, and varying consumer tastes in such products. Such voluntary chains embrace about 551 separate organizations, with about 60,000 constituent retail stores (pp. 23-24).

19. There has been a marked growth in the past ten years in the integration of concerns dealing in various lines of foods into single manufacturing and distributing organizations. None of such integrated concerns, other than petitioning defendants, exceeds in size a sales volume of $350,000,000 a year, while most of them sell less than $100,000,000 a year. Such concerns do not as a rule retail their own products, nor do they include meat packing establishments of any importance in the size or extent of their operations. Such integrated concerns have achieved an increased diversification in products handled by them (p. 25).

20. The petitioning defendants have for years manufactured and handled a wide integration of diversified products, embracing practically all the products and by-products, both edible and inedible, of the nation's animal industry, including poultry and dairy products, and including also certain important vegetable products used as substitute foods, such as oleomargarine, cotton-seed oil, and lard substitutes (pp. 26-27).

21. Integrated food concerns, such as described in Finding 19 above, frequently sell from 4% to 18% of their total annual production to single chain store concerns (p. 28).

22. Meat packing concerns do not retail their own products to any important extent. Aside from chain stores engaged in the meat packing business, as described in Finding No. 2, above, such retailing is practically confind to a total of 150 stores operated by a few small packing concerns in and about Seattle, Washington (p. 29).

[fol. 1669] 23. Meat packing concerns, other than chain stores so engaged as described above in Finding No. 2 above do not handle general lines of unrelated commodities to any important extent (p. 30).

24. The proportions of the nation's slaughtering and meat packing industry and its products now controlled by Swift and Company and Armour and Company, as compared with that controlled in 1920 by Swift and Company, Armour and Company, and Morris and Company, has not changed to any marked degree; but concentration in the control of such proportions of the business has increased to the extent that Armour and Company has since acquired Morris and Company, and whereas the 1920 proportions were divided between three leading meat packing concerns, the proportions of to-day are divided between two such concerns (pp. 31-33).

25. The Swift and Armour groups of petitioning defendants are about equal in size and volume of business. Together they controlled in 1929, 29% of all meat and lard products in the United States. Of the total business of all packers subject to the Packers and Stockyards Act, they controlled slightly over 43%, whether measured by volume of live stock purchased or volume of total sales, domestic and export. But of the total business of slaughtering packers subject to the Packers and Stockyards Act, they controlled over 50%, while of that of all slaughtering packers selling their products in interstate commerce and therefore subject to federal inspection, the petitioning defendants controlled over 54%. Similarly, the four leading packers, commonly known as the Big Four (including beside the petitioning defendants Wilson and Company and Cudahy Packing Company, and their subsidiaries), handled 56% of the business of all packers subject to the Act, and 70% of that of all slaughtering packers selling their products in interstate commerce (pp. 34-35).

26. In comparison with the volume of business done, Swift and Armour, and likewise the Big Four packers [fol. 1670] collectively, have for the past five years enjoyed more than their proportionate share of the total net profits of the nation's slaughtering and meat packing industry in interstate commerce. These respective shares of the total business and profits of said industry are shown by the following table:

[fol. 1670]

	Swift percentage		Armour percentage		Swift and Armour percentage		Big Four percentage	
	Business	Profits	Business	Profits	Business	Profits	Business	Profits
1924	23.14	21.91	29.51	28.40	54.65	50.31	69.42	63.27
1925	23.20	34.49	26.53	32.41	49.73	66.90	63.27	75.97
1926	28.18	38.29	25.09	19.94	53.19	58.23	66.22	75.91
1927	26.73	84.01	29.02	3.41	55.75	87.42	70.99	103.27
1928	26.73	33.12	28.25	25.33	55.98	58.45	70.87	69.13
1929	27.47	36.33	28.21	27.25	55.68	63.58	71.89	77.63

(p. 36)

27. The Swift and Armour combined shares of the nation's total production of meat and lard subject to federal inspection has changed from 43.1% in 1920, and 43.5% in 1921, to 43.9% in 1929 (p. 37).

28. Armour and Swift are each among the largest concerns in the United States engaged in the manufacture, distribution, and sale, of butter, cheese, poultry, eggs, vegetable oil, lard substitutes, and oleomargarine, and together control from 8% to 30% of the nation's total business in each of these commodities (p. 38).

29. Approximately 75% of the livestock produced in the United States is produced west of the Mississippi River, while about 75% of the nation's population lies east of the Mississippi River. Roughly, 50% of the nation's total production of livestock must be moved either as such or [fol.1671] in the form of its manufactured products, in interstate commerce, from this western production area to this eastern consumption area, and constitutes the most important part of the interstate commerce of the United States in livestock and meat products (p. 40).

30. The number of meat packing plants in the United States increased from 1184 in 1921, to 1250 in 1927; but no increase is shown in the number of independently owned concerns operating such plants. In 1929 there were 998 such concerns independently owned reporting to the Secretary of Agriculture as subject to the provisions of the Packers and Stockyards Act (p. 44).

31. The leading meat packing concerns in the United States, and the volume of sales, domestic and export, controlled by them, for the year 1929, are as follows:

Swift and Company	$978,000,000
Armour and Company	892,000,000
Wilson and Company	279,000,000
Cudahy Packing Company	263,000,000

In addition to this, Armour and Company did a foreign business from foreign slaughter with a sales volume of $112,000,000; and Wilson and Company $30,000,000. None of the other meat packing concerns in the United States exceeds in volume of sales $100,000,000, and only two of them exceed $50,000,000 (p. 46; also Govt. Exhibit 13).

32. The great bulk of competing packers operate locally only, selling their products usually within a radius under 200 miles from their point of production, and being unable to compete with other local packers or with the larger packers operating on a national scale beyond such radius. Their principal advantage in competition with the larger packers lies in their ability to supply the more discriminat- [fol. 1672] ing trade in their respective communities with fresh killed meats of a quality not now obtainable from the larger packers because of the latter's more distant shipments (p. 46).

33. The number of customers to whom the smaller independent packers customarily sell averages between 2500 and 3500 each. Any development that would decrease the number of independent retail outlets so as to seriously diminish the number of customers available to independent packers would seriously injure their business position. Swift and Armour each sell to from 200,000 to 300,000 customers.

34. The independently owned slaughtering and meat packing concerns operating in the United States are in active competition with each other, both in the purchase of livestock and in the sale of their products, in the various territories and localities where they respectively purchase and sell in common. The general impression among packers competing with petitioning defendants is that such competition is fair and clean. In certain localities, however, petitioning defendants through their agents and employees have recently engaged in unfair and collusive competitive practices, partly in combination and agree-

ment with each other and with various of their competitors, as follows:

(1) As to the fat-rendering business in the New York metropolitan area:

(a) In the pursuit of small competitors' trucks, for the purpose of ascertaining their customers, and luring such customers away by payment of greatly enhanced prices, bonuses and gifts of equipment.

(b) In agreements with competitors as to the allocation of customers between them.

(2) As to sale of meat products in Texas and Oklahoma territories:

[fol. 1673] (a) In agreeing with each other and with competitors for the maintenance of confidential minimum prices on certain lines of meat products, with instructions and machinery for the reporting and correction of deviations by competitors; and in some cases, threatening competitors with price cutting unless they kept their prices in line.

(3) As to the creamery business in Iowa, Missouri, Nebraska, Kansas, Wyoming, and Montana:

(a) In threatening undue price enhancement in the purchase of butter fat unless competitors would adopt a new plan for its collection and payment deemed advantageous to competitors' business.

(b) In weekly meetings and agreements between petitioners and other competitors as to prices to be paid for butter fat.

It was further shown that in the creamery business, Swift and Armour possess and exercise a price domination and leadership, furnishing regularly to their smaller competitors advance information as to prices they propose to pay for butter fat, which prices such competitors feel constrained by the conditions of the business to follow (pp. 47-59).

35. That Swift and Armour are able to use and do use the large freight traffic at their command in connection with their slaughtering and meat packing business, by offers of its allocation and threats of its withdrawal, to promote the

sale to railroads of various items of railway equipment manufactured and sold by independent corporations in which various of their officers and directors are interested as stockholders (pp. 60-61).

36. That the total value of the products of the slaughtering and meat packing industry of the United States is in excess of $3,000,000,000, and it is the largest of the nation's industries (p. 61).

37. That a marked development in motor transportation [fol. 1674] and good roads has occurred in the past ten years, enabling the advantageous use of motor trucks for interurban deliveries within a radius of 125 miles from particular distribution centers. The advantages so afforded have been shared by the petitioning defendants as by others, but to the extent that such transportation is practical, it affords quicker deliveries to customers than was formerly possible with the use of route refrigerator cars, and also enables the elimination of separate cartage charges at points of origin and destination. For greater distances, route cars must still be principally relied upon, and their radius of operation extends up to 500 miles, and sometimes more (p. 62).

38. The great bulk of deliveries by wholesale grocers to their customers are made by motor truck or freight in less than carload lots. The cost of motor truck delivery averages about the same as that of L.C.L. freight (p. 63).

39. The delivery cost of wholesale groceries averages from 4% to 5% of their delivered cost to the retailer. The usual margin of profit made by manufacturers on canned goods and distributors of wholesale groceries is less than 4%. The ability of an important competitor in the distribution of wholesale groceries to ship its products, or a large part of them, free of transportation costs to which other wholesale grocers are subject would enable the sale of the products so shipped sufficiently lower in price to wipe out its competitors' normal margin of profit, and would seriously jeopardize their ability to continue in business (pp. 63-64).

40. Petitioners are supplied with sufficient surplus branch house facilities to enable the handling of a complete line of wholesale groceries and canned goods without sub-

stantial additions thereto. This surplus is due in part to [fol. 1675] the constantly shifting territorial needs of the business, in part to the elimination of duplication consequent upon the merger of the Armour and Morris concerns in 1923, in part to the curtailment by Armour and Company in compliance with the consent decree of 1920, of the business in unrelated lines carried on by it prior thereto, and in part to an increase in car-lot deliveries in that portion of their business which is purchased by chain stores. Some of the abandoned branch houses have been disposed of at a loss, but it does not appear that such loss is more than is usual in industry in cases of obsolescence of plant or equipment, nor that such properties are substantially more difficult to dispose of when no longer needed than industrial properties generally of similar character (pp. 64-66).

41. The present supply of refrigerator cars owned by railroads, private car lines, and industrial concerns is ample for those who need them, and are in a position to use them. The use of refrigerator cars is essential to the operation of the meatpacking industry upon a national scale, where delivery of fresh meat products must be made at points distant from place of manufacture. One mode of such use is what is known as the route car system, by which refrigerator cars are loaded in station order at the meat packing plant with shipments destined to a succession of stations whose several needs are not sufficient to call for carload shipments. As the destinations are reached, their respective shipments are unloaded, often without detaching the car from the train, and without the necessity of reloading and redistributing at junction and division points. The railroad LCL tariff applies to shipments in such cars, except that the shipper must guarantee a total car revenue on a specified minimum weight, usually 10,000 or 12,000 pounds, and if the car is not loaded to its minimum, the minimum must he paid nevertheless. In making up the minimum, grocery lines may be loaded into the car, as well as meat products. As the car contains [fol. 1676] perishable shipment, it receives more rapid and expeditious movement than is accorded the railway package car service, which must be used for LCL shipment by those not in a position to use route cars (pp. 67-73).

42. The regular operation of such route cars is essential to the conduct of the slaughtering and meat packing business, and the distribution of its products on a national scale; and the cars must be moved regularly as scheduled over the prescribed routes, whether shipments are available for movement equal to minimum revenue load required or not. In practice, the cars move in many cases loaded well below the minimum. The surplus space available in such cars is sufficient to enable the petitioners to add to their business a full line of wholesale groceries and handle it through their present refrigerator cars without substantial addition thereto (pp. 67-73).

43. To the extent that such route cars are loaded below the minimum requirement with meat products, groceries and other unrelated lines can be shipped in them without additional cost (p. 72).

44. A manufacturing process known as the "Birdseye Process" has recently been developed for freezing fresh meat products in retail cuts at very low temperatures, without injuring their tissue cell structure or impairing any of the desirable features to be found in fresh killed meat products. Such products so treated may be held for from six months to a year without deterioration, and then served for consumption equal in every desirable feature to the fresh killed product. While other quick freezing processes have been developed and patented, the Birdseye Process is the best so far developed, because by the use of double plate freezing surface it enables quicker freezing from both sides than would be possible from one side of the products so treated. The Birdseye Process is covered by a patent now owned and controlled by General Foods Corporation, which paid $22,000,000 for it. The quick [fol. 1677] freezing processes require different and more costly equipment than that heretofore generally used in the meat packing business, both for manufacture, transportation, and storage of the products so treated, because of the colder temperatures required. It enables the sale of fresh meats in retail packages put up at the packing plant and sold under privately owned brand designations, and eliminates the necessity of meat cutting at local retail meat markets. Atlantic Coast Fisheries, a corporation engaged in the distribution and sale of fish east of the Mississippi

River, is using another form of this process which it controls, but which is not suited to the treatment of fresh meats, in the distribution of its products on a large scale. In so doing it depends upon separately owned and operated retailing and transportation facilities and finds their service satisfactory; and this concern is enabled thereby to sell and does sell its products in direct and successful competition with fresh fish supplies locally produced.

The integration of manufacturing, distributing, and retailing of meat products under single control is not necessary to enable the advantageous development and the use of the quick freezing process by the meat packing industry, or to afford the public the benefits thereof. The general adoption of this process by that industry is imminent, so far as the control of patent rights permits. It may be expected that the use of the process will be found more profitable if it can be restricted to a few of the larger concerns in the meat packing industry, and that those controlling patents covering the process will find it more profitable to grant their use to such larger concerns upon terms that will tend to restrict its use to them as against the rest of the industry (pp. 73-84).

45. The ownership of public stockyard market facilities [fol. 1678] by the defendants or any of them is implicit with danger of agreements, discriminations, and other preferential treatment of those using such facilities.

46. It is impracticable for those engaged in the business of wholesale marketing to sell their products at retail without antagonizing or alienating their existing retailer trade, and it would be impracticable for petitioning defendants to engage in retailing their own products unless prepared to do so as to the major portion of their business.

47. In the absence of its actual use, the privilege of retailing their products would be of no advantage to petitioners, except for use as a threat against their competitors or customers to the impairment of the free operation of the principle of competition (pp. 102-14).

48. The business position, profits, and strength of the independent wholesale grocers as a class have shown a marked impairment in the past ten years (p. 109).

49. There is at present a sufficiency, and probably a surplus of existing packing house facilities and retail food outlets (p. 109).

50. If large meat packers were to engage in the business of retailing their products on a large scale, it would be more economical for them to acquire existing retail outlets than to develop new ones. If chain stores were to go into the meat packing industry, it would be more advantageous for them to acquire existing packing house facilities than to construct new ones (p. 109).

51. The larger chain store concerns are dependent upon large packing concerns such as the petitioners for a supply of meat products adequate to their needs in quantity and quality, and if deprived of such sources of supply, would probably find it necessary either to go out of the meat retailing business or to acquire their own meat packing facilities (p. 109).

[fol. 1679] 53. If petitioners should engage in retailing their own products in combination meat and grocery stores, they could do so with economies and at prices which most independent retailers could not meet, and there is danger that the latter would be forced out of business (p. 110).

Respectfully submitted.

H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 1680] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

PROPOSED FINDINGS OF FACT IN BEHALF OF AMERICAN WHOLESALE GROCERS' ASSOCIATION AND NATIONAL WHOLESALE GROCERS' ASSOCIATION, DATED DECEMBER 1, 1930—Filed Dec. 4, 1931, as of Dec. 1, 1930

Intervenors understand that the United States and the petitioners are submitting proposed findings of fact. The American Wholesale Grocers Association and National Wholesale Grocers' Association unite in proposing the following findings of fact which they deem established by the evidence:

1. The meat-packing industry is now the largest in the United States, having recently passed the volume of the automobile industry. (R. 520.)

2. The combined sales of the Big Four meat packers, Armour & Company, Swift & Company, Wilson & Company and Cudahy Packing Company, for the year 1929 exceeded $2,616,224,000. (Petitioner's Exhibit 72.)

3. The sales of Armour & Company in 1920 and also in 1929 exceeded One Billion Dollars; the sales of Swift & Company in 1920 and in 1929 exceeded One Billion Dollars. (Petitioner's Exhibits 72, 105 and 136.)

4. The record in this case shows no corporations in the United States whose sales up to the year 1929 exceeded the sales of Swift & Company or of Armour & Company, except General Motors Corporation, American Telephone & Telegraph Company, United States Steel Corporation and Standard Oil Company of New Jersey. (Stipulation [filed Oct. 28, 1930, see Record, pp. 1660, 1794], page 44 Table III.) But in 1929 the sales of Great Atlantic & Pacific Tea Co. did reach $1,053,693,000.

5. The record in this case shows no food company either meat packer or large manufacturer, nor any chain grocery company, nor any corporation or person engaged in any branch of the food business, whose sales exceeded those either of Armour & Co. or Swift & Co. in the year 1920 [fol. 1681] or the year 1929 or in any intervening year. The third largest volume of sales of any shown in this record for any corporation engaged in any branch or branches of the food industry within the United States is that of Great Atlantic & Pacific Tea Company, whose volume for 1928 was $972,799,185. The total sales of Standard Brands Inc. in 1928 was $64,004,366; the total sales of General Foods Corporation for 1929 was $128,037,000; for National Dairy Products Co. $300,021,000. Of those food companies with which petitioners compare themselves in the petitions filed in this case and in Petitioner's Exhibit 70, the sales of each of the said companies for 1929 are substantially less than one-third of the sales of Armour & Company and less than one-third of the sales of Swift & Company for 1929. (Stipulation [filed Oct. 28, 1930, see

Record pp. 1660, 1794], page 31, Table I; Petitioner's Exhibit 70; Petitioner's Exhibit 72.)

6. With the exception of Great Atlantic & Pacific Tea Company no one of the country's large grocery chains shown in this record had annual sales in 1929 approaching in volume the total either of Armour & Company or of Swift & Company. (Petitioner's Exhibit 69). The total sales of Great Atlantic & Pacific Tea Company for that year were $1,053,693,000. The second largest volume of grocery chain stores in 1929 is that of Kroger Grocery & Baking Company—$286,611,000—which is substantially less than one-third of the total sales either of Armour & Company or Swift & Company for said year. In 1929 the sales of Safeway, Inc. a chain system were $213,496,000; in that same year the sales of American Stores Company were $143,346,000; the sales of First National Stores, Inc. for 1929 were $107,635,000; the sales of National Tea Company for 1929 were $90,210,000; the sales of MacMarr Stores, Inc. for the year 1929 were $87,238,000. (Petitioner's Exhibit 69). No other grocery chain shown in this record had sales in [fol. 1682] 1929 approaching the volume of the chain store systems named and the total sales of the four defendant meat packers for 1929 exceeded the total sales of the 12 largest grocery chains shown in this record by more than $500 000,000. (Petitioner's Exhibits 69 and 72.)

7. Swift & Company and Armour & Company advertise and distribute more widely than any of the other meat packers in the United States and their brands and products enjoy national distribution to a greater extent than those of any of their competitors. (R. 1408-9.)

8. Petitioner's Exhibit 90 entitled "List of Chain Stores performing Meat Packing Operations," and listing 89 such chain stores, shows only 13 that do any slaughtering and the meat packing operations therein stated are for the most part nothing other than warehousing, "bacon slicing," and some "sausage making" and "meat cutting." (Petitioner's Exhibit 90, R. 3030.)

9. The use by the defendant meat packers of their privately-owned refrigerator cars gives them an advantage over competitors not owning such cars. (Swift Year Book 1929, page 36; Swift Year Book 1926, page 19; Swift Year

Book 1924, pages 33-38; R. 518 et seq., 1087, 1088, 2249 to 2251.)

10. The present meat-packing plant capacity of the country is sufficient to meet the requirements of consumption. (R. 2352.)

11. The earnings of the meat-packing industry are stable. (Swift Year Book 1929, page 53; R. 1992, 1993.)

12. The costs of the large meat packers are greater than the costs of small packers due to the maintenance of branch houses, increased personnel, etc. (R. 1965-6, 2323.)

[fol. 1683] 13. An exact comparison of carcass prices and retail meat prices is impossible inasmuch as a large part of the carcass is not edible and the edible parts differ greatly in character and quality. (Swift Year Book 1922, page 32; Swift Year Book 1923, page 53; Swift Year Book 1928, page 20, R. 2651-2, 2660-1, 2437-40, 2442.)

14. The volume of the meat business in retail stores handling both meats and groceries is from 18 per cent. to 40 per cent. of the total volume of such stores. (R. 1918, 2762, 2775, 2777, 2781, 2804, 2986.)

15. The meat packers' products constitute a greater part of the volume of the retail stores handling both meats and groceries than do the products of any other manufacturer. (R. 2765, 2421-2.)

16. Some of the smaller independent meat packers have since 1920 increased both their sales and their profits and generally, with few exceptions, these packers do not retail or propose to retail their products and the larger part of their respective businesses constitutes sales to independent rather than to chain stores. (R. 1110, 1660, 1706 to 1750.)

17. It is generally true that the retail price of meats follows the market for live stock and the wholesale market for carcass meats. When the wholesale price of meat goes down, retail prices go down correspondingly. (R. 1146, 1148, 1564, 2212-3.)

18. Both Swift & Company and Armour & Company continue to own an indirect interest in stockyards. (R. 1161, 1904.)

19. Of a total of all meats sold in 1929 excluding foreign slaughter and including all Federally inspected meats the defendant packers sold $2,417,283,930.62 which is 70.73 per [fol. 1684] cent of the total Federally inspected and made 77.63 per cent. of the profits. (R. 2582, U. S. Exhibit 21.)

20. The large retail chains as well as the larger independent retailers need for their respective trades quantities and qualities of meats that only some one of the defendant packers can adequately furnish. (R. 2754-5, 2763, 2772-3.)

21. The petitioner, Armour & Company, owns 391 branch houses; owns 6,766 refrigerator cars and operates 317 car routes. (Petitioner's Exhibits 119, 121 and 122.)

22. Armour & Company has 200,000 customers. (R. 1996.) The great bulk of Armour & Company's business is sold through the independent retail trade. (R. 1972.)

23. Armour & Company would require 25,000 retail markets to distribute its output. (R. 1979.) Armour & Company sells several hundred different kinds of meat products. (R. 1918.)

24. Armour & Company at all times since the entry of the Decree has been engaged in the handling of "unrelated" lines. (R. 1989, 2282-5, Petitioner's Exhibit 113.) Armour & Company holds a $500,000 mortgage on the plants of California Cooperative Canneries. (R. 2514.) In addition to this mortgage Armour & Company has made advances to the Canneries and has guaranteed certain obligations of that company. The total of the liabilities of the California Cooperative Canneries to Armour & Company at this time being in excess of one million dollars.

25. Armour & Company now owns a controlling interest in the National Fruit Canning Company which does a business of about $3,500,000 annually. (R. 1733-4.)

[fol. 1685] 26. Armour, Wilson and Swift Salesmen are instructed to charge prices as much in excess of their confidential price lists as competitive conditions permit. (R. 3401, 3435, 3478, 3501, 3508, 3495, 3116.)

27. Armour & Company's sales of "unrelated" lines which are prohibited by the Decree were in 1920 $34,738,039, in

which year the percentage of earnings on investment was .89 of one per cent. In 1924 these sales of "unrelated" items totalled $2,318,000 in which year the profits on investment were 6.75 per cent. (R. 1714 to 1721 and also Petitioner's Exhibits 105 and 113.)

28. The dollar sales of Armour & Company in 1929 were larger than the dollar sales of the past six or seven preceding years. (A. 1992.) The earning power and stability of Armour & Company are more certain now than ever before. (R. 1992-3.)

29. There is a wide difference in the earnings on investment made by Armour & Company and Swift & Company. This difference in earnings was not explained. (Petitioner's Exhibit 72 and R. 1497, 2093.)

30. Armour & Company's net earnings from 1923 to 1929, inclusive, have been as follows:

	Amount	Percentage on net worth
1923	$15,691,000	5.26
1924	18,310,000	6.57
1925	14,452,000	5.04
1926	8,148,000	2.84
1927	538,000	.19
1928	11,326,000	4.09
1929	9,811,000	3.54

(Petitioner's Exhibit 111.)

[fol. 1686] 31. Earnings of Armour & Company in its domestic business for the years 1926 and 1927 were very substantially in excess of those contained in Finding 30 but larger losses were suffered by Armour & Company in its South American business. (Petitioner's Exhibit 126.)

32. The petitioner, Swift & Company, owns 441 branch houses; owns 5,509 refrigerator cars and operates 1014 car routes. (Petitioner's Exhibit 143.)

33. Swift & Company owns a majority of the voting stock of Libby, McNeil & Libby, which company is engaged in the canning and distribution of fruits, vegetables, milk and other products. (R. 2026-7.)

34. Swift & Company's net earnings from 1923 to 1929, inclusive, have been as follows:

Year ending	Amount	Percentage on net worth
Nov. 4, 1922	$13,049,217	6.1
Nov. 3, 1923	13,184,619	6.2
Nov. 1, 1924	14,125,988	6.6
Oct. 31, 1925	15,379,152	7.1
Nov. 6, 1926	15,645,242	7.1
Nov. 5, 1927	12,202,493	5.4
Nov. 3, 1928	14,813,182	6.6
Nov. 2, 1929	13,076,815	5.8

(Petitioner's Exhibit 136.)

35. Swift & Company has been paying dividends consecutively for about 45 years. (R. 2094.)

36. Swift & Company and Armour & Company are better equipped to handle the meat requirements of the chain stores than are the smaller packers. (R. 1157.)

37. The prices fixed by Swift & Company differ at its different branch houses at the same time and on the same [fol. 1687] commodity. The same is true of Armour & Company. (R. 1399, 1400.)

38. Swift & Company has increased its net earnings since 1920, the average 1922 to 1929 being 6⅓ per cent. on investment. (Petitioner's Exhibit 136, R. 1998.)

39. The second largest chain store system in United States, Kroger Grocery & Baking Company, engaged in the grocery business, owns two meat packing plants, one of which was acquired more than 20 years ago and the other plant acquired in 1920. (R. 1203-1206.) The largest chain store system in the United States, the Great Atlantic & Pacific Tea Co., is not actually engaged in the meat packing business, the activities of its Federally-inspected plants being limited to the slicing of bacon. (R. 2743.)

40. Chain store organizations and other large buyers are able to secure prices and terms lower than smaller buyers, but by reason of large chain store orders and the consequent savings in selling expense this is not a disadvantage to the petitioning packers. (R. 1953, 2084-5.)

41. The present production of canned foods is in excess of consumption. (R. 2989, 3280.)

42. The larger buyer is influenced in purchasing canned goods primarily by a desire to obtain a rapid turnover at a minimum cost. (R. 2998, 3001, 3281-2.)

43. There are about 3,500 canners in the United States. From 80 to 85 per cent of the canners in the United States are small canners. (R. 3276.)

44. Competition in the wholesale grocery business in the United States is active and keen. (R. 2974, 3091, 3016, 2914-5.)

[fol. 1688] 45. Wholesale prices promptly reflect changes in producers' and manufacturers' prices. (R. 2914-17, 2973-4, 3016, 3091.)

46. The present investment of so-called independent concerns engaged in the wholesale grocery business in between $1,250,000,000 and $1,500,000,000. (R. 2921.)

47. There are about 6,000 wholesale grocers in the United States and between 120,000 and 150,000 persons employed in the independent wholesale grocery business; there are approximately 380,000 retail grocers in the United States and about 1,500,000 persons employed in the independent retail grocery business. (R. 2921-2923.)

48. The present investment of so-called independents engaged in the retail grocery business is about $1,500,000,000. (R. 2922.)

49. Retail prices promptly reflect changes in wholesale prices. (R. 2914-17, 2213, 2678, 2786-7.)

50. The present retail food outlets in the United States are sufficient to meet the requirements of consumption. (R. 2352, 1170, 845-6, 2489.)

51. Competition in the retail grocery business in the United States is keen and active. (R. 2933, 2769, 2787, 2783, 2914-15.)

52. The merger or consolidation of corporations into so-called "integrated lines" has been due in part to favorable

markets for the sale of securities, and the capitalization of such new companies frequently has represented an increase in the capitalization of the constituent companies thereby making necessary increased profits in order to show the same earnings per share. (R. 2401-2.)

[fol. 1689] 53. Food products have increased in cost since 1913 to a lesser extent than other necessities and standard commodities. (R. 2439.)

54. There is a point in business expansion where additional growth fails to bring further economies. (R. 2396-8, 2748, 2752.)

55. While the annual business of Armour & Company is substantially the same in size as that of Swift & Company, there does not seem to be any explanation of the difference in the earnings of the two companies. (R. 1969.) Armour & Company's employees number 64,000 (R. 1891), while Swift & Company's employees number 53,000. (R. 2093.) The difference in the number of employees would account for $10,000,000 of increased cost in conducting Armour & Company's business. (R. 2093-4.)

56. There is no surplus of livestock in this country now, and we are in fact importing meats. (R. 752-3.)

57. Of the cattle carcass 54 per cent of the weight is edible, and the edible portion is 87 per cent of the value of the steer (R. 2469.)

58. Wilson & Company is engaged in the distribution of some "unrelated" lines. (R. 2492.)

59. Wilson & Co. salesmen had authority to cut prices of by-products and canned goods in order to secure large meat orders. (R. 3114, 3094.)

60. The entry of the larger meat packers into the canned foods industry would tend to eliminate small canners and adversely affect the smaller communities throughout the country. (R. 3285-6.)

[fol. 1690] 61. Some of the defendants engage in unfair practices in the Metropolitan District of New York City and do not in seeking to buy waste from retail meat dealers always compete among themselves, but do by unfair com-

petitive methods seek to destroy small buyers of this waste. (R. 2679 to 2726.)

62. The large retail chains as well as the larger independent retailers need for their respective trades quantities and qualities of meats that only some one of the defendant packers can adequately furnish. (R. 2754, 2755, 2763, 2772, 2773.)

63. At Vernon in the State of Texas, agents of Swift & Company, Armour & Company and Cudahy & Company controlled prices at which meats should be sold to retailers and attempted to coerce a local wholesale meat dealer to join them. This agreement began in August, 1929, and continued until this hearing. (R. 2863 to 2902.)

64. Petitioners notify competitors in the State of Texas as to their current prices and weekly changes in such prices. (R. 3045 to 3111.)

65. By means of manufacturing plants owned largely if not wholly by employees and officers of Armour and Swift, efforts are successfully made to sell railroads certain equipment on the plea that Armour and Swift control large tonnages of freight which they can shift to those carriers who buy such equipment. (R. 3037 to 3042.)

66. In the operation of purchasing cream and butter fat from producers Armour & Company and Swift & Company control prices which shall be paid by them and their competitors; and have at times increased those prices for the purpose of eliminating competitors or in order to compel [fol. 1691] them to observe the prices agreed on and stated by the agents of petitioners. These restraints of trade with a varying degree of intensity have existed within a year, and in some instances yet continue to exist in Missouri, Iowa, Nebraska, Wyoming, and Montana. (See testimony of George A. Chapman, R. 3145 to 3168, and of Kantz, R. 3172 seq.; Snyder, R. 3185, seq.; Hankins, R. 3200 seq.; and others.)

67. By reason of having agreed to the decree of February 27, 1920, petitioners obtained advantages by way of an effect on a pending case before the Interstate Commerce Commission and in terminating pending and threatened suits and prosecutions, and at this time it is impossible to

restore the status as it existed at the time such decree was entered. (Swift Yearbook 1921, pp. 51, 13.)

68. The entry of the petitioning defendant meat packers, Armour & Company and Swift & Company, into the business of manufacturing "unrelated" non-meat food products would tend to the elimination or the lessening of the number of independent manufacturers now engaged in that occupation. (R. 3285, 299[illegible]5; see Stipulation filed by United States on Nov. 4, 1930, Record, p. 2536.)

69. The entry of the petitioning defendant meat packers, Armour & Company and Swift & Company, into the business of wholesaling food products unrelated to the meat-packing industry would tend to the elimination or lessening of the number of independent concerns now engaged in the wholesaling of grocery products. (R. 2933-34, 3030, 2968-2970; see also Stipulation filed by United States on Nov. 4, 1930, Record, pp. 2536, 2538.)

70. The entry of the petitioning defendant meat packers into the business of retailing meats and "unrelated" food [fol. 1692] products would tend to the elimination or lessening of the number of independent retailers of such food products. (R. 447, 448, 1566, 1573, 1608, 2771, 2772-3, 2778, 2794, 2812-13, 2348, 2816.)

71. The large meat packers owning refrigerator cars would in many cases be able to include products other than meat in such cars without the payment of additional freight because of the fact that often present shipments of meat products are less than minimum car requirements. (R. 2261-3.)

72. If competitors of wholesale grocers could ship less than carload quantities of groceries in combination with meat in such manner that the competitors of the wholesale grocers incurred no additional freight charge for the grocery products, that advantage would greatly injure the wholesale grocery business. (R. 2826-7, 2828, 2970, 2982-3, 3027, 3030.)

73. The adoption by the large meat packers of a quick-freezing process would enable them to largely destroy any advantage which a smaller packer would have by reason of favorable location. (R. 2188-9.)

Exclusive ownership of a quick-freezing process would tend to give the owner control of the distribution of foods subject to that process. Ownership of a quick-freezing process for meats by a concern distributing grocery products would give such concern a great advantage over its competitors. (R. 1163-4, 2918-20.)

74. The entry of the meat packers into the business of retailing food products would result in the loss of their present retail customers. (R. 2350, 2160.)

75. The opening of retail stores on a large scale by either Armour & Company or Swift & Company would compel other large meat packers to establish similar retail outlets. (R. 2343, 2489.)

[fols. 1693 & 1694] 76. Should the large packers enter the retail business they would go into it generally on a large scale and would have to be prepared to take over the retailing of all their own products. (R. 2097, 2343.) If the large meat packers entered the retail field it would be more advantageous for them to acquire chains of stores. (R. 2351-2352.)

77. It would not be advantageous for chain store organizations to go into the business of slaughtering and meat packing. (R. 2351, 2757-8.)

78. The ability of the meat packers to ship canned goods at a lower L. C. L. rate than the independent canner would be disadvantageous to the latter. (R. 2993, 2994, 2995.)

[fol. 1695] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

OBJECTIONS TO PETITIONING DEFENDANTS' REQUEST FOR FINDINGS OF FACT—Filed Dec. 4, 1931, as of Jan. 31, 1931

Said petitioners having requested the Court to make findings of fact separately from those referred to in its opinion of January 5, 1931, and in accordance with their request previously filed herein December 1, 1930, United States by its counsel respectfully submits herein briefly summarized its objections to said findings.

1. To request No. 3: In the face of the Government's evidence as to agreements with reference to prices and customers, and other unfair practices, the Court is not warranted in concluding that no such agreements, etc., exist. In any event, the testimony as to the absence of such agreements can, in the nature of the case, go no farther than to lack of knowledge thereof on the part of the witnesses. Such practices are naturally cloaked in secrecy, and none of the witnesses was in a position necessarily to know of them if they existed, unless he were an interested party to them. In the absence of contrary evidence, the utmost finding warranted would be that no such practices were shown.

2. To requests 5 and 6: Objection is made to finding that defendants' competitive practices and treatment of their customers are in all respects fair and lawful, for the reasons similar to those urged against Request No. 3, above.

[fol. 1696] 3. To request 14: This is objected to, on the ground that it is too broad. The word "certain" should be inserted in the first line after "1930."

4. To request 15(e): Finding 15(e) is objected to as not supported by evidence. The very limited extent to which chain stores have gone into meat packing, whether slaughtering or processing, does not constitute a substantial change, on any proper basis of comparison with reference to this case. (Brief, pp. 11-13.)

5. To request 16: Finding 16 is objected to, on the ground that there is no satisfactory evidence that the changes referred to have caused losses. On the contrary, in spite of them, Swift has continued to maintain respectable profits. The finding would be satisfactory if the words "and cause loss" were stricken, and the last line changed to read, "and reducing profits in those branches of their business."

6. To request 17: Finding 17 is objected to as unwarranted. It is sufficiently refuted by the fact that Swift and Company, though practically identical in situation with Armour and Company, is continuing to make fair profits under present conditions.

7. To request 18: Finding 18 is objected to as unwarranted upon the law and the evidence.

8. To request 20: Finding 20 is objected to as immaterial, as the question is upon the danger of monopoly, not upon its present existence.

9. To requests 21 and 22: These are objected to as unwarranted and immaterial, in that the evidence does not show that the conditions referred to have substantially changed since 1920.

10. To request 24: Finding 24 is objected to as unwarranted upon the law and the evidence.

11. To request 25: Finding 25 is objected to as to that part which requests finding that use of motor trucks, etc., [fol. 1697] "have combined to deprive defendants of any advantage which the ownership of refrigerator cars formerly gave them, and none of the defendants enjoys any undue preferences or advantage, by reason of its ownership of refrigerator cars." Petitioners admit that the use of refrigerator cars for the combined handling of meat and grocery products in unrelated lines would give them economies and advantages not available to dealers in either separately.

12. To request 26: Finding 26 is objected to on grounds similar to those advanced against request No. 3, and for the further reason that the Packers and Stockyards Act does not deprive defendants of the power to engage in the practices enumerated, but only sets up additional machinery for dealing with such infractions.

13. To request 27: Finding 27 is objected to as immaterial, in that the Government's original Bill never charged defendants with control of the sources of market news, except as control of stockyard facilities involved "peculiar and exclusive access to information concerning receipts and sale of livestock," etc. There is no evidence that this condition has substantially changed since the entry of the consent decree.

14. To request 29: Finding 29 is objected to as immaterial, in that it shows no relation between such changes and the issues here in controversy.

15. The findings requested are objected to generally on the ground that, standing alone, and without the aid of additional facts the finding of which is separately requested by the Government, they are inadequate to enable a proper determination of the issues presented.

Respectfully submitted.

H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 1698] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

OBJECTIONS TO THE MODIFIED DECREE AND TO THE MAKING OF FINDINGS OF FACT AS PROPOSED BY THE PETITIONERS—Filed Dec. 4, 1931, as of Jan. 31, 1931

Interveners, American Wholesale Grocers Association and National Wholesale Grocers' Association, object to the making of findings of fact proposed by petitioners herein and for cause therefor say:

1. Paragraphs 2, 3, 4, 5, 6 and 11 should be supplemented by adding thereto the fact as found by the Court in its Opinion that representatives of petitioners cooperating with other defendants and other packers and with distributors of meat products have heretofore in Texas, Oklahoma, Missouri, Iowa, Nebraska, Wisconsin, Montana, New Jersey and New York, combined to restrain trade and to coerce competitors into practices proposed and pursued by petitioners.

2. Paragraph 10 of the proposed findings of petitioners should be supplemented by inserting the word "now" before the word "has".

3. It is respectfully submitted that the reduction in costs [fol. 1699] of doing business stated in proposed findings 12 and 13 has not been proven and that it is a fair inference that there will be no advantage to consumers by the extension of the business of petitioners referred to in these paragraphs.

4. Paragraphs 14, 15, 19, 24, 25 and 28 refer to changed conditions. Each of these paragraphs should be supplemented by the statement or finding that there is nothing in the changed conditions that was not foreseeable on February 27, 1920.

5. It is respectfully submitted that the evidence does not justify defendants' proposed findings or any of them and particularly that the evidence does not justify defendants' proposed findings 12, 13 and 16 or any of them.

Comment

It may be true that some of the defendant packers and one of the petitioning defendants do not earn a wholly satisfactory margin of profit. One of the petitioning defendants, Swift & Company, does earn a fair margin of profit, and the evidence conclusively shows that whatever failure, if any, there is to earn a profit is not attributable to the Consent Decree.

It should be found as a fact, as stated in substance in the Opinion of the Court, that petitioners failed fully to disclose facts as to their methods of business before and after 1920 and failed to establish that the losses, if any, suffered were attributable to the Consent Decree.

6. Particular objection is made to defendants' proposed finding 20 upon the ground that the evidence clearly sustains the proposition and the Court's Opinion indicates that [fol. 1700] the defendants do enjoy an advantage through the ownership and operation of refrigerator cars and peddler cars.

7. Objection is made to finding 21 upon the ground that it should be amplified or supplemented by finding that the Packers and Stockyards of 1921 would more strictly have sought to control the defendant packers, except for the fact that the Senate and House of Representatives of the United States, in considering this legislation, considered this Consent Decree of February 27, 1930 to be a permanent fact.

8. It should be stated as supplementing Paragraph 26 that interveners contend, presenting such contentions by motion heretofore overruled, that this Court is without jurisdiction or power to modify the Decree of February 27, 1920.

Conclusions of Law

Interveners have heretofore presented in briefs and oral arguments their contentions as to the law of the case and do not here repeat such contentions. They do, for the reasons set forth in the said briefs and arguments, here object to each and all of the conclusions of law proposed to this Court by the petitioning defendants.

Respectfully submitted.

Breed, Abbott & Morgan, Edgar Watkins, Attorneys for Interveners.

[fol. 1701] In Supreme Court of the District of Columbia

[Title omitted]

Objections of Swift & Company and Armour and Company to the Government's Request for Findings of Fact—Filed Dec. 4, 1931, as of March 17, 1931

Now comes the defendants, Swift & Company and Armour & Company, and object and except to the Government's requests for findings of fact in the above-entitled cause, and in support thereof, allege and represent to the Court the following:

1. The findings requested by the Government are mere recitals of evidence instead of findings of ultimate facts as required in equity procedure. If the Court does not confine its findings to ultimate facts, but makes findings upon particular aspects of the evidence as requested by the Government, the petitioning defendants should be afforded an opportunity to submit requests for findings of evidence in order to supplement, complete and correct the partial presentation of evidence contained in the Government's proposed findings.

2. The recitals of evidence contained in the findings requested by the Government are incomplete in that in many instances only evidence deemed favorable to the Government's contention is presented and other evidence necessary to a presentation of the same subject-matter is ignored.

3. The modification of the decree of February 27, 1920, was sought and has been granted because of changed conditions and the findings of fact requested by the Government ignore changes in conditions and established trends and are confined to a partial presentation of evidence as to present conditions.

4. The findings requested by the Government are not supported by record references, but only by references to [fol. 1702] the Government's brief and in many instances the portion of the Government's brief referred to discloses that the finding requested is not based upon evidence, but upon argument, inferences or deductions drawn from portions of the evidence or upon estimates made by the Government in its brief.

5. The evidentiary nature of the findings requested by the Government is illustrated by its Finding No. 1, which makes a distinction between slaughtering and non-slaughtering packers. The finding requested contains but a partial presentation of the evidence on this subject. It does not disclose that the processing part of the packing business is the most profitable branch of the industry as is shown by the fact that 245 non-slaughtering packers under the jurisdiction of the Packers and Stockyards Administration in 1929 earned a net profit of $25,855,501.34 from sales of $447,229,982.22, whereas in the same year the four defendants and their subsidiary corporations earned a net profit of $27,945,776.75 on sales of $2,558,742,455.18 (Government's Exhibit 7; see also Court's opinion). The Government's Finding No. 1 states that the non-slaughtering packers are dependent upon the slaughtering packers for their raw material, but does not mention the fact that non-slaughtering packers occupy this position from choice because of their ability to purchase carcasses or other wholesale cuts at a lower cost than that at which the commodity could be acquired by slaughtering. No reference is made in the Government's proposed finding to the testimony of Frederick Synder to the effect that hogs invariably show a cutting loss and that his concern purchases carcass meat from approximately 100 western packers because experience has shown that this method of doing business is more profitable than engaging in slaughtering as well as processing (Record 775-776).

6. The evidentiary nature of the Government's requested findings is further illustrated by its proposed Findings Nos. 2 and 22, relating to the extent to which chain store organizations have engaged in meat packing operations and meat packers in chain store operations. The fact that the Kroger Grocery & Baking Company is engaged in the slaughter of live stock is referred to in requested Finding No. 2, but no reference is made to the fact that the Kroger Company operates a large sausage-making plant at Detroit, Mich., nor to the fact that the Great Atlantic & Pacific Tea Company had 15 plants under Federal inspection in 1929, [fol. 1703] (Record 1669-70), whereas it had none in 1920 (Record 1663) and performs various functions heretofore performed exclusively by packers, such as bacon-slicing, warehousing and distributing meats and meat products from central warehouse points; nor to the fact that the First National Stores has just recently completed a large plant under Federal inspection at Somerville, Mass., where it is performing the following operations: meat processing, meat cutting, bacon slicing, sausage making and meat warehousing, all of which are functions of packers. Petitioner's Exhibit 90 contains a list of 83 chain store organizations which perform meat packing operations.

With respect to proposed Finding No. 22, no reference is made to the fact that Adolph Goebel, Inc., a large meat packer with plants at New York, Washington, D. C., Mason City, Iowa and other places, recently embarked in the retail field by the acquisition of the Merkel chain of 30 retail stores having sales of more than $2,000,000 a year (Record 1802); no reference is made to be Hygrade Food Products Co., organized in 1927 which acquired nine concerns engaged in the packing and food business and also the five American plants formerly owned by Allied Packers, Inc., and on February 11, 1928 entered the retail field by acquiring the Bronx Provision Company of New York and its subsidiaries, including a chain of retail stores (Petitioner's Exhibit 71).

Proposed Finding No. 22 attempts to minimize the importance of retailing operations of packing concerns in and about Seattle, Washington, while as a matter of fact, Frye & Company, of Seattle, Wash., a slaughterer and meat packer has total sales of meats of about $12,000,000 annually and its sales of meats at retail amount to about

$3,000,000 per annum (Record 1421); Carstens Packing Company, a slaughterer and meat packer with plants at Tacoma and Spokane, Washington, operates 48 retail stores and sells 40% of its product at retail (Record 1422-23).

The comments heretofore made with respect to the first, second and twenty-second findings requested by the Government clearly illustrate that those findings are not findings of ultimate facts, but findings as to particular portions of the evidence and that if the Court is to make findings of this character, it will be confronted with the duty of incorporating in each finding all of the evidence necessary to a complete presentation of the particular subject dealt with.

[fol. 1704] 7. The fact that the findings requested by the Government ignore changed conditions and the development and growth of chain store organizations since 1920, and the pronounced upward trend, is illustrated by the Government's Finding No. 3 which states that 900 centrally owned chain store systems in the United States embrace a total of 60,000 constituent stores with estimated total sales of $3,500,000,000 annually and that such stores contain 15,800 meat departments. The situation which existed in 1920 and the growth in chain store organizations and in fresh meat departments operated in chain stores are entirely ignored. A complete presentation of the evidence on this particular subject is contained in the following portion of the Court's opinion:

"In 1920, there were about 15,000 chain stores with some 1200 fresh meat departments. In 1929 the number of chain stores had increased to 60,000 of which 15,800 sold fresh meats. In 1921, the A. & P. had 4638 retail stores with sales of some $230,000,000 with no fresh meat departments. In 1929 it had 15,000 stores with sales of over $1,000,000,000 and of these stores 3851 handled fresh meats. Kroger & Co., operating a chain of grocery stores increased its sales of meat from $6,000,000 in 1920 to over $40,000,000 in 1929 and also in the latter year did a meat packing business of over $10,000,000."

8. The statements contained in Government's Findings 4 and 5 were not proved by either oral or documentary evidence, but are arrived at by means of estimates made,

not by witnesses, but by Government counsel in its brief. These estimates are based upon Great Atlantic & Pacific Tea Company figures upon the assumption that its meat business is fairly representative of all chain store organizations in the country. By using the figures of the Kroger Grocery & Baking Company or Safeway as a basis, radically different results would be obtained.

9. The statement contained in Government's Finding 13 to the effect that meat packing concerns other than the defendants frequently sell as much as 10% of their total output to chain stores and do not consider such business in any way undesirable, is immaterial, because the packers whose testimony is referred to in support of this statement, do not have branch house systems. Shipments of meat directly from packing plants to chain store warehouses conform to the small packer's usual method of doing business but in the case of the large packer it means a diversion of volume from the existing branch houses (Record 2128). The same comments are applicable to Government's Finding No. 14.

[fol. 1705] 10. Government's Finding No. 23 states that meat packing concerns do not handle general lines of unrelated commodities to any important extent and page thirty of Government's brief is cited in support of this statement. The only evidence referred to at page 30 of Government's brief is Petitioner's Exhibit No. 89 but this contains a list of 143 competing meat packing companies all engaged in the business of selling various unrelated commodities.

11. The statement contained in Government Finding No. 24 to the effect that the proportion of the nation's slaughtering controlled by Swift & Company and Armour and Company in 1920 as compared with that controlled by them at the present time, has not changed to any marked degree, is not sustained by the record. Petitioner's Exhibit No. 10 prepared from Government records by Charles B. Burmeister of the Department of Agriculture shows that while the proportion of the slaughtering done by Swift & Company and Cudahy Packing Company increased from 1920 to 1929, the slaughter of Armour and Company and Wilson & Company suffered a decrease during the same period.

On a sales volume basis each of the defendants suffered a decrease while the sales volume of leading non-defendant packers showed enormous increases (See Court's opinion). Government's Finding No. 24 is further objectionable in that it combines the slaughtering figures of Swift & Company and Armour and Company for purposes of comparison though the record shows that Swift & Company and Armour and Company are independently owned and are active competitors (Stipulation, record 1811-12, White, record 1877; Swift, record 2066, Cudahy, record 2312; Eagle, record 2481).

12. Government's Finding No. 25 is likewise objectionable in that it combines the slaughter of the four defendants for the purpose of making comparisons instead of treating these independently owned and operated concerns separately. The slaughter figures contained in Government's Finding No. 25 do not prove the amount of competition existing in either buying or selling in the packing industry because they ignore the buying of stockers and feeders and purchases by traders and speculators and ignore the business of intra-state packers, non-slaughtering packers, wholesale meat dealers, retail slaughterers and farm slaughter (see pages 62 to 68 of the Petitioning Defendants' Brief).

[fol. 1706] 13. The statements made in Government's Finding 26 regarding the profits of the defendants (again considered collectively without justification) as compared with the profits of their competitors are based upon Government's Exhibits 21 to 23 which are inaccurate for the reasons stated at pages 73 to 76 of petitioning defendants' brief. The figures contained in said exhibit and in Government Finding 26 are contrary to the percentage figures contained in the Court's opinion and contrary to the court's statement that "so that under any method of comparison it does appear that the net profits of the defendants are small as compared with that of their competitors."

14. Government's Findings 27 and 28 likewise combine the production figures of Swift & Company and Armour and Company without justification.

15. Government Finding No. 32 to the effect that the great bulk of competing packers operate locally only sell-

ing their products usually within a radius under 200 miles from their point of production, is not supported by the record. The Finding refers to page 46 of the Government brief which in turn refers to the testimony of Mayer, Hunter, Heil, Shantz and Madden. These references do not support the finding; furthermore, Morrell & Company (Record 1796); Rath Packing Company (Record 1799); Jacob Dold Packing Company (Record 1800); Hormel & Company (Record 1808) and Adolph Goebel, Inc. (Record 1801-1805) and various others do a substantial business in all of the principal markets of the United States.

16. The statement contained in Government Finding 34 to the effect that the defendant's actions with reference to the fat-rendering business in New York, the sale of meats in Texas and Oklahoma and the creamery business in western states, constitutes "unfair and collusive competitive practices," is an incorrect conclusion of law and contrary to the weight of the evidence. The evidence in the record on these subjects is discussed in petitioning defendants' brief at pages 224-231.

17. The Government conceded upon the trial of this cause that whatever reciprocal relations existed between the petitioning defendants and certain railroads were not illegal and that reciprocity is general and not peculiar to Swift & Company and Armour and Company. Furthermore, the record shows that this admittedly legal practice had been [fol. 1707] discontinued prior to the trial of this cause (Record 2091). The Government's statement of the nature of the practice is inaccurate for the reasons stated in petitioning defendants' brief at pages 221-224.

18. The inference contained in Government's Finding No. 39 to the effect that the defendants or anyone could ship "wholesale groceries" free of transportation costs, to which wholesale grocers are subject, is contrary to the decisions of the Interstate Commerce Commission, if done would be illegal, and is contrary to the record in this cause for the reasons stated in petitioning defendants' brief at pages 207-221.

19. The statements contained in Government's Findings 41, 42 and 43 covering minimum freight requirements and the effect of the shipment of groceries by defendants, are

not sustained by the record and are contrary to the decision of the Interstate Commerce Commission (62 I. C. C. 375) rendered in a proceeding to which defendants and other packers and the interveners were parties. In that decision the Interstate Commerce Commission held that the practices of railroad companies in permitting meat packers to load articles of groceries in their peddler cars and branch house cars did not result in undue prejudice to wholesale grocers or unduly prefer the packers.

20. The statements contained in Government Finding 44 that integration is not necessary to enable the advantageous development and use of the quick-freezing process or to afford the public the benefits thereof and the statement that it may be expected that the use of the process will be found more profitable if restricted to a few of the larger concerns in the meat packing industry, are not sustained by any evidence in the record, but are merely the conclusions of counsel for the Government.

21. The statement contained in Government Finding 45 to the effect that the ownership of public stockyard market facilities by the defendants or any of them is implicit with danger of agreements, discrimination and other preferential treatment, is disproved by the complete and thorough regulation and supervision of all public stockyards by the Secretary of Agriculture under the Packers and Stockyards Act, 1921; no record reference or even brief reference is given to support this finding and none can be given.

[fol. 1708] 22. The statements contained in Government Finding 46 are based upon the expressions of opinion by certain witnesses, but the facts in the record show that various meat packing concerns such as Adolph Goebel, Inc., (record 1802), Frye & Company, (record 1421), Carstens Packing Company (record 1422-23) Hygrade Food Products Company, (record 1976) are successfully engaged in selling meats at both wholesale and retail and that other concerns such as Tolerton & Warfield Co., (record 1691); S. M. Flickinger & Co., (record 3005), Drug, Inc., (record 1828-29) are also engaged in selling commodities in which they deal at both wholesale and retail.

23. The statement contained in Government Finding 47 to the effect that the privilege of retailing if not used would be of no advantage to the petitioning defendants except for use as a threat against competitors or customers, involves a misunderstanding of the testimony by the President of Armour and Company (record 1874-75). In discussing this subject, the President of Armour and Company made no reference to competitors, but was discussing the fact that under the present restrictions his company is at a disadvantage in trading with chain store organizations because those organizations have the knowledge that defendants cannot engage in the sale of meats at retail, no matter how unsatisfactory business relations with chains might become, whereas the chain organizations are free to go into the packing business if they desire to do so and some of them are actually in the business now. The testimony of the President of Armour and Company clearly shows that he was not referring to the acquisition of an advantage to be used as a threat over the chain stores, but to the elimination of an existing handicap.

24. The statement contained in Government Finding 51 to the effect that the larger chain store concerns are dependent upon the defendants for a supply of meat products adequate to their needs, is disproved by the statistics compiled by the Great Atlantic & Pacific Tea Company showing it purchases 14% of its meat from Swift & Company, 12% from Armour and Company, 8½% thereof from Wilson & Company and Cudahy Packing Company combined, and 65½% from other packers (Record p. 1130; Government Exhibit No. 4).

In the foregoing objections, the petitioning defendants [fol. 1709] have not endeavored to supplement or complete the statements of evidence contained in the proposed findings requested by the Government. The presentation of all of the material evidence contained in the record bearing upon the various subjects referred to in the Government's Findings would have been contrary to the rules of equity practice and procedure. We have not commented specifically upon each and every finding requested by the Government, but we submit that the foregoing objections illustrate that the findings requested by the Government

are evidentiary in their nature, and for that and other reasons above set forth should not be made.

Respectfully submitted.

Henry Veeder, Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Swift & Co. et al.
Charles J. Faulkner, Jr., Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Armour and Company et al.

[fol. 1710] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AMENDMENT TO THE OBJECTIONS OF SWIFT & COMPANY AND ARMOUR AND COMPANY TO THE GOVERNMENT'S REQUEST FOR FINDINGS OF FACT.—Filed Dec. 4, 1931, as of March 23, 1931

Now come the defendants, Swift & Company and Armour and Company, and amend their objections heretofore filed herein on March 17th, 1931, to the Government's request for findings of fact in the above-entitled cause, by adding thereto at page six, the following paragraph (13½):

(13½). The percentage figures contained in the Government's findings 25 and 26 purporting to show the percentage of interstate packing business done by the petitioning defendants and other defendants hereto are objected to for the following reasons, in addition to those contained in paragraphs (11) and (12).

1. The basic sales figures used in arriving at the percentages contained in Government's findings 25 and 26 include sales of non-packing house products and there is no justification for including sales of such products in a comparison supposedly made to show the proportion of interstate meat business controlled by the defendants. The sales figures used as to Swift & Company and Armour and Company and the other defendants include their sales of butter, eggs, cheese, poultry, cottonseed oil, soap, fertilizer and many other nonpacking house products.

2. The defendants' position with regard to products other than meats should be considered only in relation to

the total production of each such product separately. Petitioners' Exhibits 114, 138 and 142 and the stipulation of November 12, 1930 show that the proportion of the total production of certain other products handled by Swift & Company and Armour and Company were as follows in [fol. 1711] 1920 and 1929:

	Swift percentage		Armour percentage	
	1920	1929	1920	1929
Butter	4.81	5.59	6.60	4.60
Cheese	16.60	11.95	20.00	10.00
Poultry	5.73	5.12	4.80	3.00
Eggs	5.35	6.20	4.20	3.40
Lard Substitutes	17.00	20.00	17.00	15.00

3. If a comparison is to be made of the meat business done by the defendants as compared with the meat business done by other slaughtering packers engaged in interstate commerce, the most accurate basis available for making such a comparison is found in Petitioners' Exhibits 7 and 10. Petitioners' Exhibit 7 shows the total production of meat and lard by packing concerns under Federal inspection and Petitioners' Exhibit 10 shows the total production of meat and lard by the defendants and their affiliated and subsidiary corporations. These two exhibits show that in the year 1929 Swift & Company produced 22.8% of the total production of meat and lard by packers under Federal inspection; that Armour and Company produced 21.1% thereof, Cudahy Packing Company 7.1% thereof and Wilson & Company 6.4% thereof. The defendants insist upon their objection heretofore made, that there is no justification for combining the businesses of the competing defendants in making a comparison, but in reply to the combined figures set forth in the Government's finding, the defendants allege that the Petitioners' said exhibits 7 and 10 show that in 1929 Swift and Armour combined produced 43.9% of the total production of meat and lard by packers under Federal inspection, and that the four defendants combined produced 57.4% of the total production of meat and lard by packers operating under Federal inspection.

The petitioning defendants do not waive but reiterate their objections heretofore made, that the figures contained in the Government's findings 25 and 26 ignore the

competition of stocker and feeder buyers, traders and speculators, intrastate packers, non-slaughtering packers, [fol. 1712] wholesale meat dealers, retail slaughterers and farm slaughterers.

Respectfully submitted.

Henry Veeder, Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Swift & Co. et al. Charles J. Faulkner, Jr., Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Armour and Company et al.

[fol. 1713] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

OBJECTIONS OF SWIFT & COMPANY AND ARMOUR AND COMPANY TO THE INTERVENERS' REQUESTS FOR FINDINGS OF FACT—Filed Dec. 4, 1930, as of March 17, 1931

Now come the defendants, Swift & Company and Armour and Company and object and except to the requests for findings of fact in the above entitled cause made by the American Wholesale Grocers Association and National Wholesale Grocers Association, interveners herein, and in support of such objection and exception, allege and represent to the Court the following:

(1) The findings requested by the interveners are mere recitals of evidence instead of findings of ultimate facts as required in equity procedure.

(2) The recitals of evidence contained in the findings requested by the interveners are incomplete in that in many instances only evidence deemed favorable to the interveners' contentions is presented and other evidence necessary to a presentation of the same subject-matter is ignored.

(3) The modification of the decree of February 27, 1920 was sought and has been granted because of changed conditions and the findings requested by interveners ignore changes in conditions and established trends and are confined to a partial presentation of evidence as to present conditions.

[fol. 1714] The seventy-eight findings requested by interveners are not considered or commented upon herein separately because the Court at the time of the entry of the decree of January 31, 1931 stated that the findings requested by interveners were improper because evidentiary in their nature and therefore would not be given.

Respectfully submitted.

Henry Veeder, Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Swift & Co. et al.
Charles J. Faulkner, Jr., Paul M. Godehn, Nelson T. Hartson, Frank J. Hogan, Attorneys for Armour and Company et al.

[fol. 1715] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

FINDINGS OF FACTS—Filed March 26, 1931

From the evidence presented in this cause upon the hearing of petitions for modification of the Decree of February 27, 1920, herein, the Court finds:

1. That defendants Swift & Company and its subsidiaries, Armour & Company and its subsidiaries, Cudahy Packing Company and its subsidiaries, and Wilson & Company and its subsidiaries, considered as four entities, are each owned and controlled independently of each other.

2. That there now exists in the meat packing industry in the United States active competition among a large number of individuals, firms and corporations, including defendants herein, in the purchase of live stock and in selling of the products thereof.

3. That there have been a few sporadic instances of unfair practices and fixing of prices by the defendants, which are more fully set out in my opinion filed in this case. But that apart from these there exists no contracts, agreements, understandings, combinations or conspiracies among the defendants, or between any two of them, in restraint of trade or commerce among the States; no fixing of prices to be paid by them for live stock, raw materials,

[fol. 1716] or products for resale, bought by defendants or any of them; no fixing of prices at which defendants or any of them shall sell products dealt in by any of them; and no apportioning among defendants, or between any two of them, of territory in which, or customers with whom, they, or any of them, shall conduct business.

4. That defendants in purchasing live stock from producers and their representatives are in keen and active competition with each other, and with many other buyers of live stock, and do not subject the sellers to any unfair trade practices and do treat them fairly; and that these fair and competitive conditions apply to purchases of live stock made by defendants (a) at public stockyard markets, (b) at their own private stockyards, and (c) when buying directly from the producer, or his agent, at or near places of production.

5. That defendants in the sale of their products are in keen and active competition with each other and with numerous others selling similar products and their competitive practices in the sale of their products are fair and lawful.

6. That in the transaction of their business defendants' treatment of customers is fair and lawful.

7. That none of the defendants has a monopoly in the meat packing industry.

8. That neither the four defendants, nor any two of them, are combined to monopolize or to attempt to monopolize the meat packing industry.

9. That each of the defendants could materially reduce the cost of distributing meats and other live stock products if it engaged in selling, dealing in and transporting food-[fol. 1717] stuffs other than, and in addition to, meat food products.

10. That each of the defendants, by dealing in foodstuffs other than, and in addition to, meat food products, would be enabled to so distribute its overhead and sales costs as to effect economies in the distribution of both meats and other live stock products and of nonmeat-food products.

11. That during the ten years, 1920 to 1930, food manufacturing and distributing concerns, other than defendants, have greatly grown in volume of business, financial strength, and earning power; that there has been a marked growth (a) in the integration of concerns dealing in various lines of foods into single manufacturing, selling and distributing organizations; (b) in the integration by food concerns in the handling of products from manufacturers to consumers; and (c) in the diversification of products handled by manufacturers, wholesalers and retailers; and the trend is toward further integration and diversification.

12. That since 1920 conditions have materially changed in the methods of marketing food products by reason of (a) a great increase in the number of regularly organized retail chain food store companies; (b) the grouping together for cooperative and concerted action of large numbers of wholesale and retail food establishments in what are called voluntary chains; (c) an increasing number of combination food wholesaling and retailing establishments with the resulting reduction in such single line establish-
[fol. 1718] ments as grocery stores, vegetable and fruit stores, and meat markets; (d) the combining with grocery establishments of departments or markets for the selling of meats; and (e) the engaging by concerns retailing foods on large scale in the functions usual to wholesale and branch house distribution, and in the functions of manufacturing and processing meat products and other foods.

13. That if defendants were to engage in handling food products additional to products they are now dealing in, there is no probability that they could or would acquire a monopoly of, or control the quantity and prices of, the foods produced and/or consumed in the United States.

14. That there is keen and active competition throughout the general food industry in the United States in manufacturing, wholesaling, and retailing.

15. That there is no monopoly now existing in the United States in the manufacture, preparation, or sale of foods. Food is now produced in greater volume and variety than ever before.

16. That during the past ten years retailing organizations in groceries, vegetables, fruits and meat lines have

greatly increased in volume of business, financial strength, earning power, and buying power, have widely extended their fields of operation, and have diversified the products handled.

17. That during the past ten years, (a) the increase in the number of railroad refrigerator cars, not owned by the defendants, available to all who need to use such equipment in their businesses, has resulted in there now being ample equipment of that character for any and all who need them; (b) the increase in the use of motor trucks for the transportation of food products and the extending of the areas of their operation by reason of the great increase in good [fol. 1719] roads, and the increase in the transporting by motor trucks of products by packers competing with defendants and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants of any advantage which the ownership of refrigerator cars formerly gave them, and none of the defendants enjoys any undue preference or advantage by reason of its ownership of refrigerator cars.

18. That the administration of the Packers and Stockyards Act, 1921, by the Secretary of Agriculture, and the division of his Department set up by him therefor, subjects the defendant packers, in common with all other packers subject to the act, to complete supervision of their activities upon public stockyard markets and constitutes a real change in the conditions which existed at the time of the entry of the Decree of February 27, 1920, which change necessarily would greatly limit the power of the defendants to acquire a monopoly.

19. That none of the defendants has or can obtain control of the sources or dissemination of market and trade news respecting the live stock, the meat, or the general food markets.

20. That full and complete, prompt and unbiased market reports of all information usual and necessary for the guidance of live stock producers, agriculturists, manufacturers, wholesalers and retailers, in all lines of the food industry in the United States, are now available to all interested in such reports.

21. That conditions in the methods of doing business in the food industry in the United States have changed greatly since 1920.

22. That all of the defendants have in open court con-
[fol. 1720] sented to the ordering by this Court of such modification of the Decree of February 27, 1920, as this Court after hearing shall find just and equitable.

23. All parties consenting to the Decree entered herein February 27, 1920, concede the jurisdiction and power of this Court to modify said Decree.

[fol. 1721] Conclusion of Law

From the foregoing findings of fact the Court draws the following conclusions of law:

1. None of the defendants is now engaged in violating, attempting, or threatening to violate any of the provisions of the anti-trust laws of the United States.

2. This Court has power in virtue of the provisions of Paragraph Eighteenth of its Decree entered herein February 27, 1920, to modify said Decree in such respects as the Court finds justified in the public interest and in justice to the defendants.

3. This Court has inherent power to modify its said injunctive decree in such respects as the Court find justified in the public interest and in justice to the defendants.

4. The consent of the United States and all other original parties who consented to the entry of said Decree is not necessary to the exercise of the Court's aforementioned power to modify.

5. The provisions of Paragraph Eighteenth of said Decree constitute consent by all of the parties that the Court may entertain at any time any application for modification of the Decree and enter its order thereon.

6. Upon the facts pleaded and proved in the proceedings herein seeking modification of the injunctions of the Decree of February 27, 1920, the Court concludes that modification should be made in said Decree, as hereinafter ordered, because (a) the ends of justice would be served by such modification; (b) the changes in the statutory law and in

judicial construction given the Sherman Anti-Trust Act, [fol. 1722] since the entry of the Decree, justify modification; (c) changed conditions in the food industry during the past ten years justify modification in the public interest; and (d) changes in the controlling facts on which the injunctions of the Decree rested justify modification in justice to defendants.

7. The Decree of this Court entered in this cause on February 27, 1920, should be modified as set forth in Order entered herein January 31, 1931.

By the Court this 31 day of January, 1931.

Jennings Bailey, Justice.

[fol. 1723] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

EXCEPTIONS TO FINDINGS—Filed March 30, 1931

Now comes the plaintiff in the above-entitled cause and files the following exceptions to the findings of fact and conclusions of law made and entered by This Honorable Court in the above-entitled cause on March 26, 1931:

1. Plaintiff takes exception to findings of fact of this Court numbered respectively 3, 5, 6, 11, 12, 13, 17 and 18 in that they are not supported by substantial evidence.

2. Plaintiff takes further exception to the conclusions of law of this Court numbered respectively 1, 6 and 7 in that they are not supported by sufficient findings of fact supported by substantial evidence.

3. Plaintiff takes further exception to the refusal of this Court to make any of the findings requested by the plaintiff numbered 1 through 53, inclusive, in that they are supported by substantial evidence with respect to which there is no conflict or uncertainty, and in that they are material to a determination of the case.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 1724] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

EXCEPTIONS TO THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO HIS REFUSAL TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUESTED BY THE AMERICAN WHOLESALE GROCERS ASSOCIATION AND INTERVENERS JOINING WITH IT AND NATIONAL WHOLESALE GROCERS ASSOCIATION—Filed March 30, 1931

Come now the undersigned interveners and except to the Findings of Fact filed herein by the Court for the following reasons:

1. That said Findings of Fact are based upon the general assumption that the petitioners, the United States of America and the interveners joining therewith, should establish by evidence the facts on which the Court acts and the Court erred in adopting such principles and in not holding that the burden of proof was upon the petitioners, Swift & Company and Armour & Company, defendants to show facts justifying the granting of such petitions.

2. The 3rd Finding of Fact is in conflict with the evidence and not supported by any substantive testimony.

3. The Court's 5th Finding of Fact is in conflict with the evidence and with the Court's opinion and is not supported by substantial evidence.

[fol. 1725] 4. The Court's 7th and 8th Findings of Fact are immaterial and irrelevant to any issue in the case, the issue being whether or not there is threatened danger of monopoly.

5. The Court's 9th and 10th Findings of Fact are without substantive evidence to support them.

6. The Court's 11th and 12th Findings of Fact are without substantive evidence to support them and are inadequate in that they fail to show:

(a) That the matters and things therein referred to existed in part prior to 1920;

(b) That the evidence shows that there is a tendency at present to lessen the power of these competing integrations.

7. The 13th and 15th Findings of Fact of the Court are without evidence to support them.

8. The Court erred in its 16th Finding of Fact in taking a part of the retail business as applicable to all, the evidence showing that many retailers have lessened their earning and buying power.

9. The Court's 17th Finding of Fact errs in its failure to consider the evidence showing that railroad refrigerator cars are not available to the competitors of the petitioning defendants.

10. The conclusion of the Court in its 21st Finding is but a conclusion and not a Finding of Fact and is not supported by the evidence.

11. The 22nd and 23rd Findings of Fact are inadequate in that they fail to show that these interveners, parties plaintive by intervention, objected to the Court's jurisdiction.

[fol. 1726] Exceptions to Conclusions of Law

These interveners except to all the Court's Conclusions of Law as will hereinafter be more fully set out in the Assignment of Errors herein.

Exceptions to the Court's Failure to Make Findings of Fact

These interveners except to the refusal of the Court to make the Findings of Fact stated in their applications therefor, the first of such applications being filed prior to the entry of the Decree herein and the second at the suggestion of the Court being filed thereafter and while the Court had under consideration the making of the Findings of Fact.

Exceptions to the Court's Refusal to Make Conclusions of Law

These interveners except to the refusal of the Court to adopt and conclude the law as stated in their joint request therefor.

Wherefore these interveners respectfully pray that this, their exceptions, be allowed and filed as part of the record herein.

Edgar Watkins, Counsel for American Wholesale Grocers Association, Henry G. Sears & Company, John Hoffman & Sons, Mason Ehrman & Company, J. H. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Co., Ltd., Hicks Company, Rapides Grocery Company, Inc., and Oliver Finnie Grocery Company. William C. Breed, Breed, Abbott & Morgan, Counsel for National Wholesale Grocers Association of the United States.

[fol. 1727] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 30, 1931

Now comes the plaintiff in the above-entitled cause and files the following assignment of errors upon which plaintiff will rely upon its prosecution of the appeal in the above-entitled cause from the order made and entered by this honorable court on the 31st day of January, 1931, as amended by order dated February 26, 1931.

This court erred:

1. In that it failed to dismiss the amended petitions of the defendants Swift & Company and others and of the defendants Armour & Company and others for want of equity.

2. In that there was a failure to prove any change in conditions affecting the power of the defendants to restrain or monopolize interstate trade or commerce since the entry of the original decree sufficient to justify the modification thereof.

3. In that its findings of fact fail to support its conclusions of law.

4. In that its findings of fact numbered 3, 5, 6, 11, 12, 13, 17 and 18 are not supported by substantial evidence.

5. In that its conclusions of law are not supported by any findings of fact supported by substantial evidence.

6. In finding that during the past ten years the increase in the use of motor trucks for the transportation of food [fol. 1728] products and the extending of the areas of their operation by reason of the great increase in good roads, and the increase in the transporting by motor truck of products by packers competing with defendants and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants of any advantage which the ownership of refrigerator cars formerly gave them; and that none of the defendants enjoys any undue preference or advantage by reason of its ownership of refrigerator cars.

7. In failing to find although the fact appears upon all of the evidence that the use by the defendants of their distributive facilities in the handling of the commodities specified in paragraphs Fourth and Fifth of the aforementioned consent decree is a more potent instrument of monopoly at the present time than when the decree was entered.

8. In failing to find although the fact appears upon all the evidence that no substantial diminution, either relative or absolute, in the power and size of the defendants has occurred since the entry of the aforementioned consent decree.

9. In failing to find although the fact appears upon all the evidence that the strength and power of defendants, both relative and absolute, has increased since the entry of the aforementioned consent decree.

10. In finding in the absence of substantial evidence that if defendants were to engage in handling food products additional to products they are now dealing in there is no probability that they could or would acquire a monopoly of or control the quantity and prices of the food produced and/or consumed in the United States.

11. In finding in the absence of substantial evidence that since 1920 conditions have materially changed in the methods of marketing food products by reason of the engaging by concerns retailing food on large scale in the [fol. 1729] functions usual to wholesale and branch house

distribution, and in the functions of manufacturing and processing meat products and other foods.

12. In finding that the passage of the Packers and Stockyards Act, 1921, constitutes a change which would greatly limit the power of defendants to acquire a monopoly.

13. In concluding that none of the defendants is now engaged in violating, attempting, or threatening to violate, any of the provisions of the antitrust laws of the United States.

John Lord O'Brian, John Lord O'Brian, the Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 1730] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS ON APPEAL—Filed March 31, 1931

Considering themselves aggrieved by the final decision of the Supreme Court of the District of Columbia in the above entitled cause, the appellants herein, interveners in Supreme Court of the District of Columbia, having filed their petition for appeal herein, assign the following errors in the record and proceedings in the said case:

The Supreme Court of the District of Columbia erred:

1. In overruling on July 3, 1930, the motion of these interveners to dismiss the amended petition to modify the original decree of the Armour and Swift groups of defendants and in not holding:

(a) That the court at the time of the filing of such petition for modification had lost jurisdiction;

(b) That the decree sought to be modified being a consent decree, the court, without consent of all parties to the modification, had no jurisdiction or power to enter the order of modification herein.

2. In decreeing on January 31, 1931 the modification of said decree of February 27, 1920, there being no evidence or findings supporting the decree of modification.

3. In not holding that there was yet danger of monopoly and restraint of trade.

[fol. 1731] 4. In considering the profits of petitioners since 1920 when there was no showing or finding of such profits prior thereto.

5. In granting relief to petitioners, who, as found by the court, had failed to make "a full disclosure of the facts" in respect of their earnings.

6. In finding and concluding that, although agents and employees of petitioners in the conduct of petitioners' business had violated the Anti-Trust Laws that lack of proof of knowledge of such acts of violation by executive officers of such petitioners made such violations unimportant.

7. In modifying the original decree of February 27, 1920 notwithstanding advantages obtained by petitioners from their consent thereto, such advantages so received making it inequitable for petitioners to re-enter the grocery business.

8. In not concluding that the reciprocal buying practices of petitioners constitute a danger of monopoly and restraint of trade which makes a continuance of the decree of February 27, 1920 necessary in the protection of the public and interveners-appellants.

9. In not concluding that the use of peddler cars by petitioners constitutes a danger of monopoly and restraint of trade which makes a continuance of the decree of February 27, 1920 necessary in the protection of the public and of interveners-appellants.

10. In holding that because of the growth of the purchasing power of chain stores there was now no danger of monopoly by petitioners although they were found to have a larger purchasing power than their competitors, the chain stores.

11. In modifying the consent decree to permit petitioners to enter the wholesale grocery business when the court

found and the evidence showed that petitioners refused to disclose what purpose they had in seeking the modification.

[fol. 1732] 12. In making findings of fact and conclusions of law that are unsupported by substantial testimony and contrary to law.

13. In not making findings of fact and conclusions of law as requested by these and other interveners.

For which errors interveners-appellants pray that the said judgment of the Supreme Court of the District of Columbia dated the 31st day of January, 1931, and as amended on the 26th day of February, 1931, in the above entitled cause, be set aside and reversed and a judgment rendered dismissing the petition for modification.

Edgar Watkins, Counsel for American Wholesale Grocers Association, Henry G. Sears & Company, John Hoffman & Sons, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Co., Ltd., Hicks Company, Rapides Grocery Company, Inc., and Oliver Finnie Grocery Company.

P. O. Address: Atlanta Trust Co. Building, Atlanta, Georgia.

[fol. 1733] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 37623

UNITED STATES OF AMERICA, Petitioner-Appellant,

against

SWIFT & COMPANY ET AL., Defendants-Appellees

ASSIGNMENT OF ERRORS BY NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES, INTERVENER-APPELLANT—Filed March 31, 1931

Now comes intervener-appellant National Wholesale Grocers' Association of the United States in the above-

entitled cause, by its Attorneys, Breed, Abbott & Morgan, and says that there is manifest error in the final decree, made and entered herein by the Supreme Court of the District of Columbia on January 31, 1931, and files the following assignment of errors, upon which intervener-appellant will rely upon its prosecution of the appeal in the above-entitled cause from the said final decree of January 31, 1931:

1. The Supreme Court of the District of Columbia erred in making and entering the decree herein of January 31, 1931, modifying the consent decree entered in this cause on the 27th day of February, 1920.

2. The Court erred in holding and deciding that the amended petitions of the defendants herein state facts sufficient to entitle said defendants to the relief granted in said decree of January 31, 1931 or to any relief herein.

3. The Court erred in overruling the motions of this intervener to dismiss the amended petitions of the defendants [fol. 1734] herein.

4. The Court erred in deciding that it had power or jurisdiction to modify the said consent decree of February 27, 1920, and in receiving testimony or other evidence upon the amended petitions of defendants herein.

5. The Court erred in modifying said consent decree without the consent of the United States of America and of all the parties to said decree.

6. The Court erred in not dismissing the amended petitions of the defendants herein for lack of equity, and particularly by reason of the failure of the petitioning defendants to comply with the said consent decree and their efforts from the time of its entry, February 27, 1920, to evade or defeat it.

7. The Court erred in not finding and deciding that there is danger of monopoly and of restraint of interstate trade and commerce by and on the part of the defendants.

8. The Court erred in deciding that the testimony or other evidence in this case showed such changes in conditions since the entry of said consent decree of 1920 as to justify the modification thereof.

9. The Court erred in decreeing the modification of the said consent decree, there being no evidence or findings of fact or conclusions of law justifying such modification.

10. The Court erred in granting the amended petitions of defendants for modification, notwithstanding the finding in its filed opinion and decision herein that there had been, on the part of the defendants, "a failure to make a full disclosure of the facts" respecting their earnings; the further finding therein that "all the defendants combined [fol. 1735] control over 70% of the interstate commerce in meat packing; and the further finding therein that certain of the unfair practices charged by the United States against the petitioning defendants "are substantially true".

11. The Court erred in that its Findings of Fact, and particularly Findings numbered 5, 12(e), 13, 17, 18 and 21, are not supported by the evidence; and in that Findings numbered 5 and 13 are at variance with the Findings stated in the said opinion and decision of the Court, which was filed herein January 5, 1931.

12. The Court erred in that its various Findings of Fact, and in particular Findings numbered 12, 13, 17 and 18, are immaterial in so far as said Findings or any of them state or indicate that there is no existing monopoly or restraint of interstate trade or commerce on the part of the defendants; and are speculative and at variance with the evidence and with the said opinion and decision of the Court herein as respects future monopoly, domination or restraint of interstate trade or commerce by the defendants and the danger and potentiality thereof; and the Court further erred in its Findings of Fact in that there is no evidence that any lack of monopoly or restraint of trade or commerce found by the Court is not the result of the said consent decree of February 27, 1920.

13. The Court erred in its Conclusions of Law, and particularly in that Conclusions numbered 1, 6 and 7 are in conflict with the evidence and with the facts found in the Court's said opinion and decision filed herein January 5, 1931; and further in that Conclusions of Law numbered 1, 6 and 7 are in error, for the reason it is established that the [fol. 1736] said consent decree is essential in order to maintain any existing competitive conditions among the de-

fendants in the food industry, and the further reason that there is no evidence and no Finding of Fact based on evidence showing that the maintenance of said consent decree is not essential to prevent monopoly and restraint of interstate trade or commerce.

14. The Court erred with respect to Conclusions of Law numbered 2 to 7, inclusive, inasmuch as said conclusions are erroneous statements of law.

15. The Court erred in failing to make or to rule upon the proposed findings submitted to it by this intervener.

16. The Court erred in its Findings of Fact and conclusions of law as shown in the exceptions on file herein.

Wherefore this intervener-appellant prays that said decree of January 31, 1931 be reversed and that said Supreme Court of the District of Columbia be ordered to enter a decree reversing its said decree and decision herein and be directed to dismiss the said amended petitions of defendants-appelless herein.

Dated March 30, 1931.

William C. Breed, Breed, Abbott & Morgan, Breed, Abbott & Morgan, Attorneys for Intervener-Appellant, National Wholesale Grocers' Association of the United States, 15 Broad Street, New York, N. Y.

[fol. 1737] In Supreme Court of the District of Columbia

[Title omitted]

Petition for Appeal by the United States—Filed March 30, 1931

Comes now the plaintiff, the United States of America, and, conceiving itself aggrieved by the final decree and judgment of this Court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, prays an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider said decree erroneous are set forth in the assignment of errors on file, to which reference is made.

Plaintiff prays that a transcript of the record, proceedings, and papers on which said decree was made and entered may be duly authenticated and transmitted forthwith to the Supreme Court of the United States.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Dated March 30, 1931.

[fol. 1738] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING APPEAL OF THE UNITED STATES—
Filed March 30, 1931

In the above entitled cause, the plaintiff, the United States of America, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment and decree by this Court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided; it is

Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed, and made returnable within thirty days from the date hereof; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said decree and judgment was made and entered, to the Supreme Court of the United States.

Dated March 30, 1931.

Jennings Bailey, Justice of the Supreme Court of the District of Columbia.

[fols. 1739 & 1740] Citation in usual form showing service on Frank J. Hogan et al., filed March 30, 1931, omitted in printing.

[fol. 1741] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed Dec. 3, 1931

To: Edgar Watkins, Esq., Watkins, Asbill & Watkins, Atlanta, Georgia, Counsel for American Wholesale Grocers Association:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thatcher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this 30 day of March, 1931.

(Signed) Edgar Watkins, Counsel for American Wholesale Grocers Association et al.

[fol. 1742] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed Dec. 3, 1931

To Breed, Abbott & Morgan, Esqs., 15 Broad Street, New York, N. Y., Counsel for National Wholesale Grocers Association:

Plase take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree

and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this 30 day of March, 1931.

William C. Breed, Breed, Abbot & Morgan, Counsel for the National Wholesale Grocers Association.

[fol. 1743] In Supreme Court of the District of Columbia

[Title omitted]

Notice of Appeal—Filed Dec. 3, 1931

To James D. Cooney, Esq., 4100 South Ashland Ave., Chicago, Illinois, Counsel for Wilson & Company et al.:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this — day of ——, 1931.

—— ——, Counsel for the Wilson Group of Defendants.

[fol. 1744] Filed Dec. 3, 1931

Law Offices Brown, Cooney, Gembick & Ware, 4100 South Ashland Avenue, Chicago, Ill.

April 6, 1931.

Mr. John Lord O'Brian, Assistant to the Attorney General, Department of Justice, Washington, D. C.

DEAR SIR: I am returning to you herewith the notice of appeal in U. S. v. Swift & Company et al., Equity No. 37623, which you forwarded to my associate, Mr. Cooney.

Service of the said notice is hereby acknowledged on behalf of New York-Wilson Company (formerly Wilson & Co., Inc., a New York Corporation), Wilson & Co., Inc., of California, Wilson & Co., Inc., of Louisiana, Wilson & Co., Inc., of Oklahoma, Gotham Hotel Supply Company, Inc., Drexel Packing Co., Albert Lea Packing Company, Inc., Hermitage Lard Company (formerly Mississippi Packing Company, Inc.), and Morton-Gregson Company, these being the Wilson defendants for which the writer and Mr. Cooney appeared in the Supreme Court of the District of Columbia.

Yours truly, (Signed) W. R. Brown.

WRB-L.

[fol. 1745] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed Dec. 3, 1931

To: J. Harry Covington, Esq., Union Trust Building, Washington, D. C., Counsel for Cudahy Packing Company et al.:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification

in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this 1 day of April, 1931.

J. Harry Covington, Counsel for the Cudahy group of defendants.

[fol. 1746] In Supreme Court of the District of Columbia

[Title omitted]

Notice of Appeal—Filed Dec. 3, 1931

To: Nelson Morris, Esquire, Chicago, Illinois:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thatcher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this 4th day of April, 1931.

(Signed) Nelson Morris.

[fol. 1747] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed Dec. 3, 1931

To Henry Veeder, Esq., 33 South Clark Street, Chicago, Illinois, Counsel for Western Meat Co., Oakland Meat & Packing Co., Nevada Packing Co.:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, the plaintiff, the United States of America, does hereby appeal to the Supreme Court of the United States from the final decree and judgment by this court made and entered herein January 31, 1931, as amended by order dated February 26, 1931, so far as said decree and judgment orders the modification in any respect of the consent decree by this court made and entered herein February 27, 1920.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. William D. Mitchell, Attorney General. Thomas D. Thacher, Solicitor General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing notice of appeal is hereby acknowledged this 8th day of April, 1931.

Henry Veeder, by A. H. Veeder, Counsel for Western Meat Co., Oakland Meat & Packing Co., Nevada Packing Co.

[fol. 1748] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT—Filed March 31, 1931

The petition of American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. H. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall

Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company of Tennessee, interveners herein, respectfully represents that petitioners are aggrieved by the judgment and decree rendered herein on the 31st of January, 1931, as amended on the 26 day of February, 1931, and that petitioners for the reasons specified in the assignment of errors filed herewith desire to appeal therefrom to the Supreme Court of the United States.

Wherefore, petitioners pray that the said appeal may be allowed and made returnable to the Supreme Court of the United States according to law and that a transcript of the records, proceedings, papers, and exhibits upon which said decree and said amended decree were rendered, duly authenticated, be sent to the said the Supreme Court.

This 30th day of March, 1931.

Edgar Watkins, Counsel for Interveners Named Above.

P. O. address: Atlanta Trust Co. Bldg., Atlanta, Georgia.

[fol. 1749] In Supreme Court of the District of Columbia

[Title omitted]

Order Granting Appeal—Filed March 3 1931

Considering the foregoing petition this day presented, it is ordered that an appeal be allowed to the American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, petitioners herein, and interveners in the above described suit, from the order and decree of January 31, 1931, as amended February 26th, 1931, returnable to the Supreme Court of the United States; ordered that a certified transcript of the record be filed in the Supreme Court of the United States according to law, as prayed, upon petition-

ers, interveners named, giving bond for such costs in the sum of one hundred ($100.00) dollars.

This 30 day of March, 1931.

Jennings Bailey, Justice Supreme Court, District of Columbia.

MEMORANDUM

March 31, 1931—Undertaking, $100, on appeal of American Wholesale Grocers Association et al. approved and filed.

[fols. 1750 & 1751] Citation, in usual form, filed March 31, 1931, omitted in printing.

[fol. 1752] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE ON APPEAL—Filed April 28, 1931

To the United States of America, plaintiff and co-appellant; the National Wholesale Grocers Association, intervener and co-appellant, and the defendants in the above styled and numbered cause:

You and each of you are hereby notified that American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, appellants-interveners in the above styled cause, appeal from the judgment or order entered in the above styled cause on the 31st day of January, 1931, and amended on the 26th day of February, 1931, and that on the — day of

March, 1931 the Court entered an order granting such appeal from the whole of said order.

Edgar Watkins, Counsel for American Wholesale Grocers Association et al., Appellants-Interveners, Atlanta Trust Co. Bldg., Atlanta, Georgia.

[fol. 1753] We hereby accept service of notice of appeal, citation on appeal, and copy of præcipe for record on appeal, and waive any and all other and further service and notice.

This 31 day of March, 1931.

John Lord O'Brian, The Assistant to the Attorney General, Counsel for United States of America. William C. Breed, Breed, Abbott & Morgan, Attorneys for National Wholesale Grocers Association. Frank J. Hogan, Nelson T. Hartson, Attorneys for Armour & Company, Defendants Named in Petition of the United States Filed Herein, and the Individuals and Corporations Named Therewith and yet Remaining Defendants. Frank J. Hogan, Nelson T. Hartson, Attorneys for Swift & Company, Defendants Named in said Petition Herein and the Individuals and Corporations Named Therewith and Yet Remaining Defendants.

[fol. 1754] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF SERVICE—Filed April 21, 1931

William Burke Williamson, of Chicago, Illinois, in the Northern District of Illinois, Eastern Division, being first duly sworn on oath, deposes and says that on April 6, 1931, he personally served the documents listed hereinafter upon James D. Cooney, 4100 South Ashland Avenue, Chicago, Illinois, by informing him of the contents thereof and by leaving with him true copies thereof; that the said James D. Cooney then and there stated to this deponent that he represented as attorney the following nine companies:

New York-Wilson Company (formerly Wilson & Co., Inc., a New York corporation),

Wilson & Co., Inc., of California,
Wilson & Co., Inc., of Louisiana,
Wilson & Co., Inc., of Oklahoma,
Gotham Hotel Supply Company, Inc.,
Drexel Packing Co.,
Albert Lea Packing Company, Inc.,
Hermitage Lard Company (formerly Mississippi Packing Company, Inc.),
Morton-Gregson Company.

This deponent further says that on April 7, 1931, he personally served the document hereinafter listed upon John M. Lee, Suite 1659, First National Bank Building, 38 South Dearborn Street, Chicago, Illinois, by informing him of the contents thereof and by leaving with him true copies thereof; that the said John M. Lee then and there stated to this deponent that he represented as attorney Nelson [fol. 1755] Morris; that said John M. Lee who then and now occupies an office adjoining that of Nelson Morris and one of the same suite of offices at said 1659 First National Bank Building, delivered the documents hereinafter listed to said Nelson Morris and secured the signature of said Nelson Morris while this deponent was in the office occupied by said John M. Lee.

This deponent further says that on April 7, 1931, he personally served the documents hereinafter listed upon the said John M. Lee, Suite 1659, First National Bank Building, 38 South Dearborn Street, Chicago, Illinois, by informing him of the contents thereof and by leaving with him true copies thereof; that the said John M. Lee then and there stated to this deponent that he represented as attorney such of the Morris group of defendants as have not been dismissed from the above entitled case.

This deponent further says that he served the documents as aforesaid on behalf of the National Wholesale Grocers Association of the United States, intervenor-appellant, said documents being as follows:

Petition for appeal,
Citation on appeal,
Notice of appeal,
Order allowing appeal,
Assignment of errors,

Order extending time for docketing case with Clerk of the Supreme Court of the United States,

Order extending time for filing with Clerk præcipe designating portions of the record.

This deponent further says that each and every one of said documents listed above have been filed in the office of the Clerk of the Supreme Court of the District of Columbia.

Further deponent sayeth not.

William Burke Williamson.

[fol. 1756] Subscribed and sworn to this 17th day of April, 1931, before me, a Notary Public in and for the County of Cook, State of Illinois, and a person authorized to administer oaths for use in the United States District Court for the Northern District of Illinois. My commission expires Dec. 4, 1933. Lucile E. Mercer, Notary Public. (Seal of Lucile E. Mercer, Notary Public, Cook County, Ill.)

[fol. 1757] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR APPEAL—Filed March 31, 1931

The intervenor, National Wholesale Grocers Association of the United States, conceiving itself aggrieved by the final decree made and entered on the 31st day of January, 1931, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated March 28th, 1931.

William C. Breed, Breed, Abbott & Morgan, Breed, Abbott & Morgan, 15 Broad Street, New York City, New York, Attorneys for Intervenor National Wholesale Grocers Association of the United States.

[fol. 1758] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 31, 1931

On the 31st day of March, 1931, came the intervenor, National Wholesale Grocers Association of the United States, by Breed, Abbott & Morgan, its attorneys, and filed herein and presented to this Court its Petition praying for the allowance of an Appeal to the Supreme Court of the United States from the final Decree made and entered in the Supreme Court of the District of Columbia in the above entitled cause on January 31, 1931, as amended February 26, 1931, for the reasons specified in the assignment of errors filed herewith and also praying that a transcript of the record, proceedings and papers upon which said final Decree was entered duly authenticated be sent to said Supreme Court of the United States according to law upon petitioner intervenor named giving bond for such cause in the sum of $100.00; and it is

Ordered and decreed that the Appeal be and the same is hereby allowed as prayed and made returnable within thirty days from the date hereof and the Clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings and papers on which said Decree and Judgment was made and entered to the Supreme Court of the United States.

Jennings Bailey, Justice of the Supreme Court of the District of Columbia.

[fol. 1759] MEMORANDUM

March 31, 1931—Undertaking on Appeal for $100 on behalf of National Wholesale Grocers' Association of the United States, approved and filed.

[fols. 1760 & 1761] Citation, in usual form, filed March 31, 1931, omitted in printing.

[fol. 1762] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed April 1, 1931

The President of the United States to the United States of America, plaintiff and coappellant; The American Wholesale Grocers Association, and the other persons, firms, and corporations named therewith in the petition, intervenors and coappellants, and the defendants in the above-styled and numbered cause:

You and each of you are hereby notified that National Wholesale Grocers Association of the United States, appellant intervenor in the above-styled cause, appeals from the judgment or order entered in the above-styled cause on the 31st day of January, 1931, amended February 26th, 1931, and that on the 31st day of March, 1931, the court entered an order granting such appeal from the whole of said final order.

William C. Breed, Breed, Abbott & Morgan, Counsel for National Wholesale Grocers Association of the United States, Appellant, Intervenor.

[fol. 1763] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ADMISSION OF SERVICE, &c.—Filed April 14, 1931

Due and timely service of the petition for appeal, citation on appeal, notice of appeal, order allowing appeal and assignment of errors is hereby admitted.

John Lord O'Brian, The Assistant to the Attorney General, Counsel for United States of America, Coappellant. Date served: March 31st, 1931. Edgar Watkins, Attorneys for American Wholesale Grocers Association and the Other Persons, Firms and Corporations Named Therewith in the Petition, Intervenors and Coappellants. Date

served: March 31st, 1931. Frank J. Hogan, Nelson T. Hartson, Attorneys for Armour & Company, Defendants Named in Petition of the United States of America Filed Herewith, and the Individuals Named Therewith and Yet Remaining Defendants. Date served: March 31st 1931. Frank [fol. 1764] J. Hogan, Nelson T. Hartson, Attorneys for Swift & Company, Defendants Named in said Petition, and the Individuals Named Therewith and Yet Remaining Defendants. Date served: March 31st, 1931. J. Harry Covington, Attorneys for Cudahy Packing Company, Defendants Named in the said Petition Filed Herein, and the Individuals Named Therewith and Yet Remaining Defendants. Date served: March 31st, 1931. Nelson Morris, Nelson Morris, Pro Se. Date served: April 7, 1931. John M. Lee, Attorney for Such of the Morris Group for Which he Has Entered His Appearance and as to Whom the Decree Has Been Suspended. Date Served: April 7th, 1931.

[fol. 1765] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT—Filed April 20, 1931

William L. Hanaway, being duly sworn, deposes and says that on the 31st day of March, 1931, he personally served a notice of appeal, citation on appeal, petition for appeal, order allowing appeal and assignment of errors on the following persons, on behalf of the National Wholesale Grocers Association of the United States, intervener-appellant:

(1) Hammond E. Chaffetz, of counsel for the United States of America; John Lord O'Brian admitting service on behalf of the government.

(2) Edgar Watkins, attorney for American Wholesale Grocers Association, and the other persons, firms and cor-

porations named therewith in the petition, interveners and co-appellants.

(3) Nelson T. Hartson, on behalf of Frank J. Hogan, attorney for Armour & Company, defendants named in the petition of the United States of America, and the individuals named therewith and yet remaining defendants.

(4) Nelson T. Hartson, on behalf of Frank J. Hogan, attorney for Swift & Company, defendants named in said petition, and the individuals named therewith and yet remaining defendants.

(5) J. Harry Covington, on behalf of J. Harry Coving-
[fol. 1766] ton, attorney for Cudahy Packing Company, defendants named in the said petition and the individuals named therewith and yet remaining defendants.

Defendant further says that he is over 21 years of age and that he is not a party to this proceeding and that service of the above papers was perfected by leaving copies of each with the persons named above and securing their signatures admitting such service.

Wm. L. Hanaway.

Sworn to and subscribed before me this 18th day of April 1931. Michael Keegan. Michael Keegan, Notary Public, Kings County. Kings Co. Clerk's No. 173, Reg. No. 2212. N. Y. Co. Clerk's No. 442, Reg. No. 2-K-313. Commission expires March 30, 1932. (Seal.)

[fol. 1767] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE

We hereby acknowledge due and timely service of the petition for appeal, citation on appeal, notice of appeal, order allowing appeal and assignment of errors, by the

National Wholesale Grocers Association of the United States, Intervenor-Appellant.

This 6th day of April, 1931.

W. R. Brown, J. D. Cooney, Attorneys for New York-Wilson Company (Formerly Wilson & Co., Inc., a New York Corporation), Wilson & Co., Inc., of California; Wilson & Co., Inc., of Louisiana; Wilson & Co., Inc., of Oklahoma; Gotham Hotel Supply Company, Inc., Drexel Packing Co., Albert Lea Packing Company, Inc., Hermitage Lard Company (Formerly Mississippi Packing Company, Inc.), Morton-Gregson Company, said Parties Being All of the Parties for Whom said W. R. Brown and/or J. D. Cooney Appeared in the Present Proceeding.

[fol. 1768] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF GEORGE B. ROBBINS FOR SUSPENSION OF DECREE—Filed June 30, 1921

George B. Robbins, one of the defendants in the above entitled cause, respectfully represents:

That he is not now and since November 1, 1920, has not been an officer, director or employee of any of the following corporations named as defendants in the "Armour Group" and signatories to the consents and decree, heretofore filed herein, of which group this petitioner is named as an individual defendant: Armour & Company (Ill.); Armour & Company (Ky.); Armour & Company (Texas); Armour & Company, Ltd. (La.); the Anglo-American Provision Company; The Colorado Packing & Provision Company; Fowler Packing Company; Hammond Packing Company; The New York Butchers Dressed Meat Company; Atlantic Hotel Supply Company, (Inc.).

That on November 1, 1920, this petitioner resigned as an officer, director, and employee of any and all of the aforesaid corporations of which at that time he was either an

officer or director; that such resignation was intended to effectuate and in fact did effectuate a complete and final severance of all connection of this petitioner as an officer, director or employee of any and all of said corporations, without condition or reservation of any kind or nature, [fol. 1769] whatsoever; that this petitioner is not now acting either directly or indirectly either as an officer, director or employee, and since November 1, 1920, has not so acted either directly or indirectly for or on behalf of any of the above named corporations.

That the petitioner has no interest either by stockholdings otherwise in any of the before named corporations.

That this petitioner is not now and never has been an officer, director or employee of any of the corporations named in the "Swift Group", "Morris Group", "Wilson Group" or "Cudahy Group" as defendants in the above entitled cause.

Petitioner's affidavit as to the foregoing facts is hereto annexed and is prayed may be read as a part hereof.

The premises considered, your petitioner respectfully prays that the consent decree herein shall be modified so as to exclude your petitioner from the prohibitions therein contained and that the Court enter an order to that end.

(Signed) Conrad H. Syme, (Signed) Chas. A. Doyle, (Signed) Chas. J. Faulkner, Jr., Attys. for Petitioners.

[fol. 1770] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF GEORGE B. ROBBINS—Filed June 30, 1921

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

George B. Robbins, one of the defendants in the above entitled cause, being first duly sworn, on oath deposes and says:

That he is not now and since November 1st, 1920, has not been an officer, director, or employee of any of the following corporations named as defendants in the "Armour Group" and signatories to the consents and decree, heretofore filed

herein, of which group this affiant is named as an individual defendant: Armour & Company (Ill.); Armour & Company (N. J.); Armour & Company (Ky.); Armour & Company (Texas); Armour & Company, Ltd. (La.); the Anglo-American Provision Company; The Colorado Packing & Provision Company; Fowler Packing Company; Hammond Packing Company; The New York Butchers Dressed Meat Company; Atlantic Hotel Supply Company, (Inc.).

That on November 1st, 1920, this affiant resigned as an officer, director, and employee of any and all of the aforesaid corporations of which at that time he was either an officer or director; that such resignation was intended to effectuate and in fact did effectuate a complete and final severance of all connection of this affiant as an officer, director, or employee of any and all of said corporations, without condition or reservation of any kind or nature, whatsoever; that this affiant is not now acting either [fol. 1771] directly or indirectly either as an officer, director, or employee, and since November 1st, 1920, has not so acted either directly or indirectly for or on behalf of any of the above named corporations.

That the affiant has no interest either by stockholdings or otherwise in any of the beforenamed corporations.

That this affiant is not now and never has been an officer, director, or employee of any of the corporations named in the "Swift Group," "Morris Group," "Wilson Group," or "Cudahy Group" as defendants in the above entitled cause.

That this affidavit is made for the purpose of securing an order from the Honorable Justices of the above entitled court dismissing the above entitled cause as to this affiant, and discharging him from all orders, decrees, or agreements heretofore entered therein.

Dated at San Francisco, California, this Sixteenth day of May, A. D. 1921

(Signed) George B. Robbins.

Subscribed and sworn to before the undersigned, a Notary Public in and for the County of San Francisco, State of California, on this 16th day of May, 1921. (Signed) James Mason, Notary Public. My commission expires December 4th, 1923.

Certificate of authenticity of the Notary Public signed by the County Clerk, is attached.

[fol. 1772] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER SUSPENDING DECREE AS TO GEORGE B. ROBBINS.—Filed June 30 1921

It is by the Court this 30th day of June 1921, ordered that the decree of this Court entered in this cause on the 27th day of February, 1920, be and the same is hereby suspended as to the defendant George B. Robbins so long as he, the said Robbins, does not become an officer, director, agent or employe of any of the corporate defendants in this cause, or does not represent or act for, directly or indirectly, any defendant in this cause other than himself in the ownership of any interest in any of the following:

(1) Public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, or

(2) Any public cold storage warehouse, or

(3) Any corporation, firm or association which is in the business in the United States of manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in any of the products or commodities mentioned in paragraph Fourth of said decree of February 27th, 1920.

(4) Retail meat markets except as provided in the decree.

William Hitz, Justice.

Approved for the United States.

Herman J. Galloway, Special Assistant to the Atty. Gen.

I consent.

Conrad H. Syme, Attorney for Petitioner Robbins.

[fol. 1773] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF ROBERT J. DUNHAM FOR SUSPENSION OF DECREE—Filed June 30, 1921

To the Honorable Justices of the above-entitled Court:

Robert J. Dunham, one of the defendants in the above entitled cause, respectfully states:

That he is not now and since November 1, 1920, has not been an officer, director, or employee of any of the following corporations named as defendants in the "Armour Group" and signatories to the consents and decree, heretofore filed herein, of which group this petitioner is named as an individual defendant: Armour & Company, (Ill.); Armour & Company, (N. J.); Armour & Company, (Ky.); Armour & Company, (Texas); Armour & Company, Ltd. (La.); The Anglo-American Provision Company; The Colorado Packing & Provision Company; Fowler Packing Company; Hammond Packing Company; The New York Butchers Dressed Meat Company; Atlantic Hotel Supply Company, (Inc.).

That on November 1, 1920, this petitioner resigned as an officer, director and employee of any and all of the aforesaid corporations of which at that time he was either an officer or director; that such resignation was intended to effectuate and in fact did effectuate a complete and final severance of all connection of this petitioner as an officer, [fol. 1774] director or employee of any and all of said corporations, without condition or reservation of any kind or nature whatsoever; that this petitioner is not now acting either directly or indirectly either as an officer, director or employee, and since November 1, 1920, has not so acted either directly or indirectly for or on behalf of any of the above named corporations.

That the only interest of this petitioner either by stockholdings or otherwise in any of the above named corporations is as follows: He is the owner and holder of one hundred and fifty (150) shares of the preferred stock of Armour & Company (Ill.), which this petitioner owns and holds solely as an investment.

That this petitioner is not now and never has been an officer, director or employee of any of the corporations named in the Swift groups, Morris Groups, Wilson Groups, or Cudahy Groups as defendants in the above entitled cause.

Petitioner's affidavit as to the foregoing facts is hereto annexed and is prayed may be read as a part hereof.

The premises considered, your petitioner respectfully prays that the consent decree herein shall be modified so as

to exclude your petitioner from the prohibitions therein contained and that the Court enter an order to that end.

(S.) Conrad H. Syme, (S.) Chas. A. Doyle, (S.) Chas. J. Faulkner, Jr., Attys. for Petitioner.

[fol. 1775] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF ROBERT J. DUNHAM—Filed June 30, 1921

STATE OF ILLINOIS,
County of Cook, ss:

Robert J. Dunham, one of the defendants in the above entitled cause, being first duly sworn, on oath deposes and says:

That he is not now and since November 1st, 1920, has not been an officer, director, or employee of any of the following corporations named as defendants in the "Armour Group" and signatories to the consents and decree, heretofore filed herein, of which group this affiant is named as an individual defendant: Armour & Company, (Ill.); Armour & Company, (N. J.); Armour & Company, (Ky.); Armour & Company, (Texas); Armour & Company, Ltd. (La.); The Anglo-American Provision Company; The Colorado Packing & Provision Company; Fowler Packing Company; Hammond Packing Company; The New York Butchers Dressed Meat Company; Atlantic Hotel Supply Company (Inc.).

That on November 1st, 1920, this affiant resigned as an officer, director, and employee of any and all of the aforesaid corporations of which at that time he was either an officer or director; that such resignation was intended to effectuate and in fact did effectuate a complete and final severance of all connection of this affiant as an officer, director, or employee of any and all of said corporations, without condition or reservation of any kind or nature [fol. 1776] whatsoever; that this affiant is not now acting either directly or indirectly either as an officer, director, or

employee, and since November 1st, 1920, has not so acted either directly or indirectly for or on behalf of any of the above named corporations.

That the only interest of this affiant either by stockholdings or otherwise in any of the above named corporations is as follows: He is the owner and holder of one hundred fifty (150) shares of the Preferred stock of Armour & Company (Ill.), which this affiant owns and holds solely as an investment.

That this affiant is not now and never has been an officer, director, or employee of any of the corporations named in the Swift groups, Morris groups, Wilson groups, or Cudahy groups as defendants in the above entitled cause.

That this affidavit is made for the purpose of securing an order from the Honorable Justices of the above entitled Court dismissing the above entitled cause as to this affiant, and discharging him from all orders, decrees, or agreement heretofore entered therein.

Dated at Chicago, Illinois, this 16th day of June, A. D. 1921.

(S.) Robert J. Dunham.

Subscribed and sworn to before the undersigned, a Notary Public in and for the County of Cook, State of Illinois, on this 16th day of June A. D., 1921. (S.) Frank A. Becker, Notary Public. My commission expires January 24, 1923.

County Clerk's certificate of authenticity of Notary Public's commission attached.

[fol. 1777] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER SUSPENDING DECREE AS TO ROBERT J. DUNHAM—Filed June 30, 1921

It is by the Court this 30th day of June 1921, ordered that the decree of this Court entered in this cause on the 27th

day of February, 1920, be and the same is hereby suspended as to the defendant Robert J. Dunham so long as he, the said Dunham, does not become an officer, director, agent or employee of any of the corporate defendants in this cause, or does not represent or act for, directly or indirectly, any defendant in this cause other than himself in the ownership of any interest in any of the following:

(1) Public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, or

(2) Any public cold storage warehouse, or

(3) Any corporation, firm or association which is in the business in the United States of manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in any of the products or commodities mentioned in paragraph Fourth of said decree of February 27th, 1920.

(4) Retail meat markets except as provided in the decree.

(S.) William Hitz, Justice.

Approved for the United States.
Herman J. Galloway, Special Asst. to the Atty. Gen.

I consent.
Conrad H. Syme, Atty. for Petitioner Dunham.

[fol. 1778] [File endorsement omitted]

In Supreme Court of the District of Columbia

[Title omitted]

Petition of Fred L. Washburn for Suspension of Decree —Filed June 30, 1921

To the Honorable Justices of the above-entitled court:

Fred L. Washburn, one of the defendants in the above entitled cause, respectfully states that at the time of the filing of the petition in this cause he was president and director of the Western Meat Company, one of the corporate defendants in said cause, and is the owner of thirty-six

(36) shares of the twenty-five thousand (25,000) shares of capital stock of said corporation; that he has resigned the office of president and director of the Western Meat Company and is no longer employed by said Western Meat Company, and has no interest therein or connection therewith except as the holder of said thirty-six (36) shares of stock, and that he is in no way connected with or interested in any of the other corporate defendants in said cause.

This petitioner respectfully prays that the Consent Decree herein shall be modified so as to exclude petitioner from the prohibitions therein contained and that the Court enter an order to that end.

(S.) Fred L. Washburn.

Subscribed and sworn to by Fred L. Washburn before the undersigned, a Notary Public, this 14th day of April, A. D. 1921. (S.) F. G. White, Notary Public for Oregon. My commission expires May 25, 1928. (Notarial Seal.)

[fol. 1779] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER SUSPENDING DECREE AS TO FRED L. WASHBURN—Filed June 30, 1921

It is by the Court this 30th day of June 1921,

Ordered that the decree of this Court entered in this cause on the 27th day of February, 1920, be and the same is hereby suspended as to the defendant Fred L. Washburn so long as he, the said Washburn, does not become an officer, director, agent or employe of any of the corporate defendants in this cause, or does not represent or act for, directly or indirectly, any defendant in this cause other than himself in the ownership of any interest in any of the following:

(1) Public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, or

(2) Any public cold storage warehouse, or

(3) Any corporation, form or association which is in the business in the United States of manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in any of the products or commodities mentioned in paragraph Fourth of said decree of February 27th, 1920.

(4) Retail meat markets except as provided in the decree.

William Hitz, Justice.

I consent.

Conrad H. Syme, Atty. for Petitioner Washburn.

Approved for the United States.

Herman J. Galloway, Special Assistant to the Attorney General.

[fol. 1780] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR MODIFICATION OF CONSENT DECREE—Filed Oct. 2, 1929

To the Honorable Justices of the above-entitled court:

Morris & Company, a Maine corporation, now known as the American Food Products Company, one of the defendants in the above entitled cause, respectfully states:

That on March 28th, 1923 it sold and disposed of practically all of its assets, and this sale and disposition was approved, after a full and complete hearing, by the Secretary of Agriculture; that it is not now engaged in the packing business and has not been engaged in this business since March 28th, 1923 and is now engaged solely in liquidating its affairs and has changed its name to American Food Products Company; that Morris & Company, a Maine corporation was one of its subsidiaries but this Company is no longer in business, and its charter is considered as abandoned; that its subsidiary, Morris & Company, a New

Jersey corporation, and Morris & Company, a Louisiana corporation, have not been actively engaged in business since March 28th, 1923 and are engaged exclusively in collecting certain outstanding accounts; that its subsidiaries, Morris & Company of Pennsylvania, Joseph Stern & Sons, Incorporated, Corwin Wilde & Company and National Hotel Supply Company have been dissolved; that the charters of the Brooklyn Beef & Provision Company, Condit Beef & Provision Company and Donnelly & Company have been abandoned; that the petitioner has disposed of all of its interest in Chamberlain & Company, J. M. Wilson & Company, Middletown Beef and Provision Company and Glenn & Anderson Company.

That this petitioner's affidavit as to the foregoing facts is hereto annexed and is prayed may be read as a part hereof.

The premises considered, your petitioner respectfully prays that the consent decree herein shall be modified so as to exclude your petitioner and the entire Morris Group of Defendants from the prohibitions therein contained, and that the Court enter an order to that end.

(Sgd.) John M. Lee, Solicitor for said Petitioner.

[fol. 1781] In Supreme Court of the District of Columbia

[Title omitted]

Affidavit of M. E. Smith

State of Illinois,
County of Cook, ss:

M. E. Smith, being first duly sworn, on oath deposes and says:

That he is the Vice-President, Treasurer and Secretary of the American Food Products Company, a Maine corporation, formerly known as Morris & Company; that on to wit March 28th, 1923, Morris & Company, a Maine corporation sold and disposed of practically all its assets which sale and disposition, after a full and complete hearing was approved by the Secretary of Agriculture of the United States; that since said date of March 28th, 1923, said Morris & Company, a Maine corporation, now known as the American Food Products Company has not been engaged in the packing house business, but has been engaged in

liquidating its affairs; that on to wit May 1st, 1923 said Morris & Company, by proper corporate action changed its name to American Food Products Company.

That Morris Packing Company (Me.) has not been actively engaged in business since prior to April, 1923, that on to wit October 31st, 1923 the Deputy Attorney General of the State of Maine issued his certificate certifying that he had received satisfactory proof that the company had ceased to transact business; that Morris & Company (N. J.) and Morris & Company (La.) have not been actively engaged in business for over six (6) years last passed and are solely engaged in collecting certain outstanding accounts; that Morris & Company of Pennsylvania (Pa.) was dissolved in 1926; that Joseph Stern & Sons, Incorporated, was dissolved October 29th, 1923; that the Brooklyn Beef and Provision Company and the Condit Beef and Provision Company have not engaged in any kind of business since prior to April, 1923, and the Charters of said companies are considered as abandoned; that Corwin Wilde & Company was dissolved April 8th, 1921; that Donnelly & Company has not been actively engaged in business since prior to April, 1923 and the company was enjoined on March 26th, 1923 by the State of Massachusetts from further continuing to do business by virtue of its failure to file annual reports, etc.; that the National Hotel Supply Com-
[fol. 1782] pany was dissolved on May 23rd, 1927; that prior to April 1923 Morris & Company, now known as American Food Products Company, sold and disposed of all of its stock holdings in Chamberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company and Glenn & Anderson Company, and since said date Morris & Company, now known as American Food Products Company has had no interest in these four companies; that Nelson Morris is now in Europe and it is not definitely known as to just when he will return; that H. A. Timmins left this country in December 1928, to take a trip around the world, that he is not now in this country and is not expected to return until the Spring of 1930; that C. M. Macfarlane recently underwent two or three operations and is now convalescing at his home outside of Chicago.

Dated at Chicago, Illinois, this 16th day of September, A. D. 1929.

(Sgd.) M. E. Smith.

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the County of Cook, State of Illinois, on this 16th day of September, A. D. 1929. (Sgd.) Earl V. Brown, Notary Public. (Seal.)

[fol. 1783] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER SUSPENDING DECREE AS TO MORRIS GROUP—Filed Oct. 2, 1929

This cause came on further to be heard this 2d day of October, 1929, upon the application of Morris & Company, a Maine corporation, now known as American Food Products Company, in its own behalf and for the Morris group of defendants to be released from the force and effect of the Consent Decree hereinbfore entered February 27, 1920, and it appearing to the Court upon said petition and affidavit attached that said Morris & Company has gone out of the slaughtering and meat packing business, and its subsidiary corporations included in the Morris group of defendants, have either been dissolved or sold, or have discontinued said business and remain in existence only for the purpose of liquidation and eventual dissolution, and the Court being fully advised in the premises.

It is hereby ordered, adjudged, and decreed that said Consent Decree of February 27, 1920, be and the same is hereby suspended:

1. As to each of the corporate defendants included in said Morris group so long as each said defendant, respectively, does not continue to engage or re-engage actively in the slaughtering or meat packing business as a subsidiary owned or controlled directly or indirectly by any of the corporate defendants in this cause.

2. As to each of the individual defendants included in said Morris group so long as each said defendant, re-

spectively, does not become or continue to be an officer, director, agent or employee of any of the corporate defend-
[fol. 1784] ants in this cause, while such corporate defendants are actively engaged in the slaughtering and/or meat packing business; or does not represent or act for, directly, or indirectly, any defendant in this cause other than himself, in the ownership of any interest in any of the following:

(1) Public stockyard market company, stockyard terminal, railroad, stockyard market newspaper, stockyard market journal, or

(2) Any public cold storage warehouse, or

(3) Any corporation, firm or association which is in the business in the United States of manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in any of the products or commodities mentioned in paragraph Fourth of said decree of February 27, 1920.

(4) Retail meat markets, except as provided in the decree.

(Sgd.) Wendell P. Stafford.

Consented to for the United States.
(Sgd.) H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 1785] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OF CONTINUANCE—Filed Oct. 1, 1929

On consent of the parties concerned, it is hereby ordered that the hearing herein set for October 2, 1929, by this Court's Order of July 24, 1929, be and the same is hereby continued until Nov. 6th, 1929, and the provisions of Paragraphs 6 and 7 of said Order be and the same are hereby extended until said hearing.

Dated Oct. 1/29.

Wendell P. Stafford, Justice.

The entry of the above Order is hereby consented to.
H. B. Teegarden, H. B. Teegarden, Special Assistant to the Attorney General. Conrad H. Syme, Chas. A. Douglas, Frank J. Hogan, Counsel for Armour and Swift Groups of Defendants. Edgar Watkins, Counsel for American Wholesale Grocers, Intervenor. Breed, Abbot & Morgan, Frank K. Nebeker, Counsel for National Wholesale Grocers' Association, Intervenor.

[fol. 1786] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OF CONTINUANCE—Filed Nov. 4, 1929

On the consent of the parties concerned, it is hereby ordered this 4th day of November, 1929, that the hearing herein set for November 6, 1929, by this Court's order of October 1, 1929, be and the same is hereby continued until November 14, 1929, and the provisions of Paragraphs 6 and 7 of this Court's order of July 4, 1929, hereby extended until said hearing.

It is further ordered that the time for filing answers to the petitions of the Armour and Swift groups of defendants for modification of the consent decree of 1920 be and the same is hereby extended to November 14, 1929.

(Sgd.) Wendell P. Stafford, Justice.

Dated —— —, ——.

The entry of the above order is hereby consented to.
(Sgd.) H. B. Teegarden, Special Assistant to the Attorney General. (Sgd.) Frank J. Hogan, (Sgd.) Chas. J. Faulkner, (Sgd.) Henry Veeder, Counsel for Armour and Swift Groups of Defendants. (Sgd.) Edgar Watkins, Counsel for American Wholesale Grocers, Intervenor. (Sgd.) Frank K. Nebeker, Counsel for National Wholesale Grocers' Association, Intervenor.

[fol. 1787] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OF CONTINUANCE—Filed Nov. 13, 1929

On the consent of the parties concerned, it is hereby ordered this 13th day of November, 1929, that the hearing herein set for November 14, 1929, by this Court's order of November 4, 1929, be and the same is hereby continued until December 19, 1929, and the provisions of Paragraphs 6 and 7 of this Court's order of July 24, 1929, are hereby extended until said hearing.

It is further ordered that the time for filing answers to the petitions of the Armour and Swift groups of defendants for modification of the consent decree of 1920 be and the same is hereby extended to December 19, 1929.

Wendell P. Stafford, Justice.

The entry of the above order is hereby consented to,
H. B. Teegarden, Special Assistant to the Attorney General. Frank J. Hogan, C. J. Faulkner, Henry Veeder, Counsel for Armour and Swift Groups of Defendants. Edgar Watkins, Counsel for American Wholesale Grocers, Intervenor. Breed, Abbot & Morgan, Frank K. Nebeker, Counsel for National Wholesale Grocers' Association, Intervenor.

[fol. 1788] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OF CONTINUANCE—Filed Dec. 19, 1929

On the consent of the parties concerned, it is hereby ordered this 19th day of December, 1929, that the time within which the government is required to file answers to the petitions of the Armour and Swift groups of defend-

ants for modification of the Consent Decree of 1920 be and the same is hereby extended to January 19, 1930.

It is further ordered that the provisions of Paragraphs 6 and 7 of this Court's order of July 24, 1929, are hereby extended until the hearing of the motions referred to in said Paragraph 6.

Alfred A. Wheat, Justice.

The entry of the above order is hereby consented to.

H. B. Teegarden, Special Assistant to the Attorney General. Frank J. Hogan, Nelson T. Hartson, Counsel for Armour and Swift Groups of Defendants.

[fol. 1789] In Supreme Court of the District of Columbia

[Title omitted]

Order as to Filing Certain Papers Nunc Pro Tunc—Filed June 11, 1931

The attached stipulation, with reference to the inclusion of certain papers in the record of appeal to the Supreme Court of the United States herein now pending, having been submitted to the Court; and it appearing to the Court that the facts are as therein stated, it is this 11th day of June, 1931,

Hereby ordered that the documents therein specified which have not heretofore been filed be received by the Clerk for filing nunc pro tunc as of the dates the same were respectively submitted to the Court.

Jennings Bailey, Justice.

[fol. 1790] In Supreme Court of the District of Columbia

[Title omitted]

Stipulation

It is hereby stipulated and agreed by and between the parties and interveners in the above entitled cause, by their counsel:

I. That the following documents, copies of which are hereto attached and made a part hereof, having been duly filed or submitted to the Court as respectively indicated,

and at the times respectively stated, shall be deemed to be a part of the record herein, for purposes of appeal to the Supreme Court of the United States now pending:

1. Petitioning defendants' requests for findings of fact and conclusions of law, submitted December 1, 1930.

2. Proposed findings of fact of American Wholesale Grocers' Association, et al., submitted December 1, 1930.

3. Proposed findings of fact of National Wholesale Grocers' Association, submitted December 1, 1930.

4. Request for findings of fact, submitted by the United States on January 31, 1931.

5. Objections to petitioning defendants' requests for findings of fact, submitted by the United States, on January 31, 1931.

6. Objections to the making of findings of fact as proposed by the petitioners, submitted jointly by the interveners, on January 31, 1931.

7. Objections of Swift & Company and Armour & Company to the government's request for findings of fact, filed March 17, 1931.

[fol. 1791] 8. Objections of Swift & Company and Armour & Company to proposed findings of fact of interveners, filed March 17, 1931.

9. Amendment to the objections of Swift & Company and Armour & Company to the government's request for findings of fact, filed March 23, 1931.

II. That on March 26, 1931, the Court made and entered its Findings of Fact and Conclusions of Law as of January 31, 1931.

H. B. Teegarden, Special Asst. to the Attny. General, Counsel for the United States. Edgar Watkins, Counsel for American Wholesale Grocers' Association. Frank J. Hogan, Counsel for Petitioning Defendants. Breed, Abbott & Morgan, W. C. Breed, Frank K. Nebeker, Counsel for National Wholesale Grocers' Association.

[fol. 1792] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR DESIGNATION OF RECORD ON APPEAL OF THE UNITED STATES—Filed Aug. 8, 1931

To the Clerk of the said Court:

The United States of America, appellant, desires the following portions of the record in the above-entitled cause to be incorporated into the transcript of record on its appeal to the Supreme Court of the United States, namely:

1. Petition of the United States, filed February 27, 1920.
2. Answers of defendants, Swift & Company, et al., Armour & Company, et al., Morris & Company, et al., Wilson & Company, et al., Cudahy Packing Company, et al., Western Meat Company, et al., New England Dressed Meat and Wool Company, et al., severally filed February 27, 1920.
3. Decree entered February 27, 1920, and consents thereto.
4. Amended petitions of defendants Swift & Company, et al., and of defendants Armour & Company, et al., for modification of the consent decree, filed April 3, 1930.
5. Answer of the United States thereto, filed April 12, 1930.
6. Statement of evidence.
7. Notice of motion to approve statement of evidence, and acknowledgments of service thereof.
8. Order settling statement of evidence.

[fol. 1793] 9. Original Petitioners' Exhibits Nos. 3, 4, 7, 10, 33 to 38 incl., 42 to 57 incl., 69 to 74 incl., 85, 86, 88, 89, 90, 105 to 128 incl., 135 to 153 incl., and 155 to 167 incl.

10. Original Government Exhibits Nos. 4 to 31 incl., 94, 100, and 101.
11. Opinion of the Court, filed Jan. 5, 1931.
12. Order modifying consent decree, entered January 31, 1931.
13. Order correcting decree of January 31, 1931, entered February 26, 1931.
14. Petitioning defendants' requests for findings of fact and conclusions of law, filed December 1, 1930.
15. Proposed findings of fact in behalf of American Wholesale Grocers Association, filed December 1, 1930.

16. Proposed findings of fact in behalf of National Wholesale Grocers Association, filed December 1, 1930.

17. Request for findings of fact, filed by the United States, January 31, 1931.

18. Objections to petitioning defendants' requests for findings of fact, filed by the United States January 31, 1931.

19. Objections to the making of findings of fact as proposed by petitioners, submitted jointly by the interveners, January 31, 1931.

20. Objections of Swift & Company and Armour & Company to the Government's request for findings of fact, filed March 17, 1931.

21. Objections of Swift & Company and Armour & Company to proposed findings of fact of interveners, filed March 17, 1931.

22. Amendment to the objections of Swift & Company and Armour & Company to the Government's request for findings of fact, filed March 23, 1931.

[fol. 1794] 23. Findings of fact and conclusions of law, filed by the Court March 26, 1931, as of January 31, 1931.

24. Stipulation with reference to filing various requests for findings of fact and objections thereto, etc., filed June 11, 1931.

25. Order for filing *nunc pro tunc*, entered June 11, 1931.

26. Exceptions to findings, filed by the United States March 30, 1931.

27. Assignment of errors, filed March 30, 1931.

28. Petition for appeal by the United States, filed March 30, 1931.

29. Order allowing appeal, filed March 30, 1931.

30. Citation on appeal, issued March 30, 1931, and acknowledgments of service thereof from:

1. American Wholesale Grocers Association, by Edgar Watkins, filed March 30, 1931.

2. National Wholesale Grocers Association, by Breed, Abbott & Morgan, filed March 30, 1931.

3. Cudahy Packing Company, by J. Harry Covington, filed April 1, 1931.

4. Petitioning defendants, by Frank J. Hogan, filed April 1, 1931.

5. Morris group of defendants, and Nelson Morris, by John M. Lee, filed April 4, 1931.

6. Western Meat Company, Oakland Meat & Packing Company, and Nevada Packing Company, by Henry Veeder, filed April 8, 1931.

31. Orders extending time for filing præcipe:

1. To May 1, 1931, filed March 31, 1931.
2. To May 31, 1931, filed April 28, 1931.
3. To August 10, 1931, filed May 22, 1931.
4. For appellees, to twenty days after Government præcipe, filed August 1, 1931.

[fol. 1795] 32. Orders extending time for docketing:

1. To May 30, 1931, filed March 31, 1931.
2. To August 10, 1931, filed May 22, 1931.
3. To December 1, 1931, filed July 31, 1931.

33. This præcipe for designation of record.

H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing præcipe is hereby acknowledged this 3rd day of August, 1931.

Frank J. Hogan, Nelson T. Hartson, Counsel for Petitioning Defendants. Edgar Watkins, Counsel for American Wholesale Grocers Association. William C. Breed, Breed, Abbott & Morgan, Counsel for National Wholesale Grocers Association.

[fol. 1796] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR RECORD—Filed August 4, 1931

Appellants-interveners, American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, having seasonably filed their petition for appeal and the same having been allowed, respectfully request the Clerk of this Court to prepare the

transcript of record on their appeal, including therein the following parts of the record.

1. Petition of Southern Wholesale Grocers Association and others, to intervene and Order granting same, filed September 10, 1921.

2. Intervening petition of Southern Wholesale Grocers Association and others, filed September 10, 1921.

3. Amended petition of intervention of Southern Wholesale Grocers Association, filed October 13, 1921.

4. Motion of plaintiff to set aside order granting leave to Southern Wholesale Grocers Association and others to intervene, dated September 24, 1921.

5. Order overruling motion to strike out intervening petition of Southern Wholesale Grocers Association, entered November 5, 1921.

[fol. 1797] 6. Amendments praying leave to substitute American Wholesale Grocers' Association for Southern Wholesale Grocers' Association and order granting prayer of June 14, 1922.

7. These interveners' motion to dismiss amended petition of the Swift and Armour defendants.

8. The answers of these interveners to the petitions of Swift and Armour defendants to modify.

9. Memoranda as to approval and filing of bond of these interveners-appellants.

10. The petition for appeal, the order thereon, and the citation on appeal and the service thereon of these interveners-appellants, dated March 30, 1931.

11. The assignment of errors on appeal filed by these interveners-appellants.

12. This designation of the transcript of record.

It is respectfully requested that such of the foregoing record as may be designated by other appellants shall notwithstanding their designation here be copied in the transcript of record on appeal once only, and that such portions of the record not herein designated as are designated by other appellants be considered on the appeal of these appellants. This præcipe is in lieu of the one filed herein on March 30, 1931.

Edgar Watkins, Counsel for Interveners Named Above.

P. O. Address: Atlanta Trust Company Building, Atlanta, Georgia.

The foregoing Præcipe is approved, and it is ordered that the record therein designated be transmitted to the Supreme Court of the United States.

—— ——, Justice Supreme Court, District of Columbia.

[fol. 1798] In Supreme Court of the District of Columbia

[Title omitted]

Notice of Filing Præcipe—Filed August 4, 1931

Please take notice that on the 3rd day of August, 1931, we filed with the Clerk of the Supreme Court of the District of Columbia, a substitute præcipe, designating the portions of the record to be transmitted to the Supreme Court of the United States on the appeal taken by American Wholesale Grocers' Association of the United States and other Interveners-Appellants in the above cause, a copy of which præcipe is hereto annexed and herewith served upon you.

Dated August 3rd, 1931.

Edgar Watkins, Watkins, Asbill & Watkins, Attorneys for Interveners-Appellants American Wholesale Grocers' Association of the United States, Atlanta Trust Company Building, Atlanta, Georgia.

Service accepted and receipt of a copy of this notice and the attached præcipe acknowledged this August 3, 1931.

H. B. Teegarden, Special Assistant to the Attorney General, for Appellant, the United States. Frank J. Hogan, Nelson T. Hartson, Counsel for Petitioning Defendants-Appellees. William C. Breed, Breed, Abbott & Morgan, Counsel for National Wholesale Grocers' Association.

[fol. 1799] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed April 23, 1931

We hereby accept service of notice of appeal, citation on appeal, and copy of præcipe for record on appeal, and waive any and all other and further service and notice.

This 30th day of March, 1931.

(Signed) J. Harry Covington, Attorney for Cudahy & Company, Defendants Named in the said Petition Filed Herein, and the Individuals and Corporations Names Therewith and yet Remaining Defendants.

[fol. 1800] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed April 28, 1931

We hereby accept service of notice of appeal, citation on appeal, and copy of præcipe for record on appeal, and waive any and all other and further service and notice.

This 7th day of April, 1931.

(Signed) Nelson Morris, Nelson Morris, pro Se.

[fol. 1801] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed April 28, 1931

We hereby accept service of notice of appeal, citation on

appeal, and copy of præcipe for record on appeal, and waive any and all other and further service and notice.

This 6th day of April, 1931.

(Signed) W. R. Brown, J. D. Cooney, Attorneys for New York-Wilson Company (Formerly Wilson & Co., Inc., a New York Corporation), Wilson & Co., Inc., of California; Wilson & Co., Inc., of Louisiana; Wilson & Co., Inc., of Oklahoma; Gotham Hotel Supply Company, Inc., Drexel Packing Co., Albert Lea Packing Company, Inc., Hermitage Lard Company (Formerly Mississippi Packing Company, Inc.), Morton-Gregson Company.

[fol. 1802] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed May 22, 1931

We hereby acknowledge due and timely service of a copy of the præcipe filed by Intervener-Appellant, National Wholesale Grocers' Association of the United States, and of the notice of filing of said præcipe.

May 19th, 1931.

(S.) W. R. Brown, (S.) James D. Cooney, Attorneys for New York-Wilson Company (Formerly Wilson & Co., Inc., a New York Corporation), Wilson & Co., Inc., of California; Wilson & Co., Inc., of Louisiana; Wilson & Co., Inc., of Oklahoma; Gotham Hotel Supply Company, Inc., Drexel Packing Co., Albert Lea Packing Company, Inc., Hermitage Lard Company (Formerly Mississippi Packing Company, Inc.), Morton-Gregson Company, said Parties Being All of the Parties for Whom said W. R. Brown and/or J. D. Cooney Appeared in the Present Proceeding. Date served: May 19th, 1931. (S.) Nelson Morris, Nelson Morris, pro Se—Date served: May 19th, 1931—Attorney for Such of the Morris Group for Which he Has Entered His Appearance and as to Whom the Decree Has Been Suspended. Date served: May —, 1931.

[fol. 1803] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS,
County of Cook, ss:

William Burke Williamson, of Chicago, Illinois, in the Northern District of Illinois, Eastern Division, beng first duly sworn on oath, deposes and says that on May 19, 1931, he personally served the documents hereinafter listed upon John M. Lee, Suite 1659, First National Bank Building, 38 South Dearborn Street, Chicago, Illinois, by informing him of the contents thereof and by leaving with him true copies thereof; that he served the documents as aforesaid on behalf of the National Wholesale Grocers' Association of the United States, Intervener-Appellant in the above entitled cause, said documents being as follows: Præcipe filed by intervener-appellant, National Wholesale Grocers' Association of the United States, Notice of Filing Præcipe.

This deponent further says that each and every one of said documents listed above has been filed in the office of the Clerk of the Supreme Court of the District of Columbia.

(S.) William Burke Williamson.

Subscribed and sworn to this 20th day of May, 1931, before me, a Notary Public in and for the County of Cook and State of Illinois and a person authorized to administer oaths for use in the United States District Court for the Northern District of Illinois. (S.) Pauline W. Little, Notary Public. My commission expires December 12th, 1933. (Seal.)

[fol. 1804] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

INTERVENER-APPELLANT'S PRÆCIPE—Filed May 13, 1931

To the Clerk of the said Court:

In addition to any portions of the record which may be designated or stipulated by Appellant, United States of

America, this Intervener-Appellant, National Wholesale Grocers' Association of the United States, desires the following portions of the record in the above entitled cause to be incorporated into the transcript on its appeal to the Supreme Court of the United States, namely:

1. Memorandum decision by Mr. Justice Stafford, filed November 1, 1921, on motion of United States of America to strike petition to intervene.

2. Order filed November 5, 1921 by Mr. Justice Stafford allowing National Wholesale Grocers' Association of the United States to intervene herein.

3. Memorandum Opinion by Mr. Justice Bailey, filed herein April 23, 1925.

4. Decree suspending in whole operation of Consent Decree, filed May 1, 1925.

5. Motions of this intervener, filed April 12, 1930, to dismiss the amended petitions of Swift & Company and of Armour & Company, defendants herein.

[fol. 1805] 6. Memorandum opinion of Mr. Justice Bailey of this Court, filed June 28, 1930, overruling motions of American Wholesale Grocers' Association and National Wholesale Grocers' Association of the United States, interveners, to dismiss defendants' amended petitions.

7. Order of this Court, filed July 3, 1930, overruling said interveners' motions to dismiss the amended petitions of defendants.

8. Answers of this intervener filed July 22nd, 1930 to amended petitions of defendants, Swift & Company and others, and Armour & Company, and others, for modification of the Consent Decree of February 27, 1920.

9. Motion of intervener-appellant, National Wholesale Grocers' Association of the United States, to dismiss amended petitions of defendants, the Court's ruling thereon and the exception noted, being page 45 of the official stenographic report of the proceeding herein.

10. Objections of intervener-appellant, National Wholesale Grocers' Association of the United States to testimony, the Court's ruling thereon and the exception to such

ruling, being pages 88 and 89 of the official stenographic report of the proceeding herein.

11. Formal objections of intervener-appellant, National Wholesale Grocers' Association of the United States, to testimony, being pages 274-277, inclusive, of the official stenographic report of the proceeding herein.

12. Proposed Findings of Fact in behalf of American Wholesale Grocers' Association and National Wholesale Grocers' Association dated December 1, 1930, and submitted herein.

[fol. 1806] 13. Intervener-appellants' exceptions filed March 30, 1931 to this Court's findings of fact and conclusions of law.

14. This intervener's petition for appeal, the order of this Court thereon, this intervener's citation on appeal and its notice of appeal, and the acknowledgments and proofs of service thereof.

15. This intervener's assignment of errors on appeal and proofs of service thereof.

16. This præcipe, and notice of filing of this præcipe with the acknowledgments or proofs of service thereof.

17. Orders extending the time of intervener-appellant, National Wholesale Grocers' Association of the United States for filing this præcipe and for docketing the case with the Clerk of the Supreme Court of the United States.

It is respectfully requested that such of the foregoing portions of the record as may be designated by other attorneys shall, notwithstanding this designation here, be copied only once in the transcript of record.

Dated May 13, 1931.

William C. Breed, Breed, Abbott & Morgan, Attorneys for Intervener-Appellant, National Wholesale Grocers' Association of the United States, 15 Broad Street, New York, N. Y.

[fol. 1807] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF FILING PRÆCIPE—Filed May 13, 1931

Please take notice that on the 13th day of May, 1931, we filed with the Clerk of the Supreme Court of the District of Columbia, a præcipe, designating the portions of the record to be transmitted to the Supreme Court of the United States on the appeal taken by Intervener-Appellant, National Wholesale Grocers' Association of the United States, in the above cause, a copy of which præcipe is hereto annexed and herewith served upon you.

Dated May 13th, 1931.

William C. Breed, Breed, Abbott & Morgan, Attorneys for Intervener-Appellant, National Wholesale Grocers' Association of the United States, 15 Broad Street, New York, N. Y.

[fol. 1808] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed May 15, 1931

We hereby acknowledge due and timely service of a copy of the præcipe filed by Intervener-Appellant, National Wholesale Grocers' Association of the United States, and of the notice of filing of said præcipe.

H. B. Teegarden, Special Assistant to the Attorney General, for United States of America, Co-appellant. Date served: May 13, 1931. Edgar Watkins, Attorneys for American Wholesale Grocers Association and the Other Persons, Firms, and Corporations Named Therewith in the Petition, Interveners and Co-Appellants. Date served:

May 15, 1931. Frank J. Hogan, Nelson T. Hartson, Attorneys for Defendants Armour & Company and Others Named Therewith in Petition of the United States of America Filed Herein and Yet Remaining Defendants. Date served: May 13, 1931. Frank J. Hogan, Nelson T. Hartson, Attorneys for Defendants Swift & Company and Others Named Therewith in Petition of the United States of America Filed Herein and Yet Remaining Defendants. Date served: May 13, 1931. J. Harry Covington, Attorneys for Defendants Cudahy Packing Company and Others Named Therewith in Petition of the United States of America Filed Herein and Yet Remaining Defendants. Date served: May 15, 1931.

[fol. 1809] [File endorsement omitted.]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed May 22, 1931

We hereby acknowledge due and timely service of a copy of the præcipe filed by Intervener-Appellant, National Wholesale Grocers' Association of the United States, and of the notice of filing of said præcipe.

May 19th, 1931.

W. R. Brown, James D. Cooney, Attorneys for New York-Wilson Company (Formerly Wilson & Co., Inc., a New York Corporation), Wilson & Co., Inc., of California; Wilson & Co., Inc., of Louisiana; Wilson & Co., Inc., of Oklahoma; Gotham Hotel Supply Company, Inc., Drexel Packing Co., Albert Lea Packing Company, Inc., Hermitage Lard Company (Formerly Mississippi Packing Company, Inc.), Morton-Gregson Company, said Parties being All of the Parties for Whom said W. R. Brown and/or J. D. Cooney Appeared in the Present Proceeding. Date served: May 19th, 1931. Nelson Morris, Nelson Morris, pro Se. Date

served: May 19th, 1931. —— ——, Attorney for Such of the Morris Group for Which He Has Entered His Appearance and as to Whom the Decree Has Been Suspended. Date served: May —, 1931.

[fol. 1810] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS,
County of Cook, ss:

William Burke Williamson, of Chicago, Illinois, in the Northern District of Illinois, Eastern Division, being first duly sworn on oath, deposes and says that on May 19, 1931, he personally served the documents hereinafter listed upon John M. Lee, Suite 1659, First National Bank Building, 38 South Dearborn Street, Chicago, Illinois, by informing him of the contents thereof and by leaving with him true copies thereof; that he served the documents as aforesaid on behalf of the National Wholesale Grocers' Association of the United States, Intervener-Appellant in the above entitled cause, said documents being as follows: Præcipe filed by intervener-appellant National Wholesale Grocers' Association of the United States, Notice of Filing Præcipe.

This deponent further says that each and every one of said documents listed above has been filed in the office of the Clerk of the Supreme Court of the District of Columbia.

William Burke Williamson.

Subscribed and sworn to this 20th day of May, 1931, before me, a Notary Public in and for the County of Cook and State of Illinois and a person authorized to administer oaths for use in the United [fol. 1811] States District Court for the Northern District of Illinois.

Pauline W. Little, Notary Public. My commission expires December 12th, 1933. (Seal of Pauline W. Little, Notary Public, Cook County, Ill.

[fol. 1812] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER RE TRANSCRIPT OF RECORD

This cause came on for further hearing on application of the United States for an order approving the narrative statement of evidence filed herein, and for an order to certify exhibits to the Supreme Court of the United States; and the Court being fully advised in the premises, and the parties having consented thereto, it is hereby Ordered:

1. That the narrative statement of evidence filed herein, which, together with the exhibits to be certified separately to the Supreme Court of the United States, constitutes a true and complete statement of all the evidence introduced in this cause, be, and the same is, hereby approved.

2. That the Clerk of this Court, in preparing the transcript of the record on appeal to the Supreme Court of the United States, shall certify and transmit to the Clerk of the Supreme Court of the United States, together with the transcript of record, the Petitioner's Exhibits and Government's Exhibits as are below designated by number, only such exhibits or portions thereof as are respectively below [fol. 1813] indicated to be printed as part of the record; but that the parties hereto shall be free to reproduce in their briefs, or to refer in their briefs or arguments to, any portions of said designated exhibits as are not printed, as though they were printed as part of the record.

Petitioner's exhibits designated	Portions to be printed
1, 2	None
3, 4	In full
6	None
7	Title page and pp. 3, 4, 9, and 10
8, 9	None
10	In full
11-21, incl.	None
23-38, incl.	None
42-45, incl.	None
46-48, incl.	In full
49	Title page and pp. 10 and 11

Petitioner's exhibits designated	Portions to be printed
50-56, incl.	None
57	In full
58-61, incl.	None
66-67	None
69-74, incl.	In full
75-84, incl.	None
85, 86	In full
88	None
89, 90	In full
105-114, incl.	In full
115-118, incl.	None
119-124, incl.	In full
125, 126	None
[fol. 1814] 127	In full
126-134, incl.	None
135-146, incl.	In full
147-152, incl.	None
153	In full
154	None
155	In full
156	None
157-159, incl.	In full
160-164, incl.	None
165, 166, 166A	In full
167, 172, 173	None
Government's exhibits designated	
4, 5, 6	In full
7 to 27, incl.	In full
28	None
29 to 31, incl.	In full
94, 100, 101	None

Dated December 8, 1931.

Jennings Bailey, Justice.

Consented to.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. Edgar Watkins, Counsel for American Wholesale Grocers' Association. Breed, Abbott & Morgan, Frank K. Nebeker, Counsel for National Wholesale Grocers' Association. Frank J. Hogan, Nelson T. Hartson, Counsel for Petitioning Defendants.

[fol. 1815] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE OF SWIFT & COMPANY ET AL. AND ARMOUR AND COMPANY ET AL. FOR DESIGNATION OF ADDITIONAL PARTS OF RECORD ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 20, 1931

To the Clerk of said Court:

Swift & Company, et al. and Armour and Company, et al. Appellees, request that the following portions of the record in the above entitled cause be incorporated into the transcript of record on appeal to the Supreme Court of the United States, in addition to those portions of the record designated in the præcipe heretofore filed herein by the Appellants, United States of America, American Wholesale Grocers Association and National Wholesale Grocers Association:

1. Petition of George B. Robbins filed June 30, 1921, to suspend the decree of February 27, 1920.
2. Order entered June 30, 1921, suspending the operation of the decree of February 27, 1920 as to George B. Robbins.
3. Petition of Robert J. Dunham filed June 30, 1921, to suspend the decree of February 27, 1920.
4. Order entered June 30, 1921, suspending the operation of the decree of February 27, 1920 as to Robert J. Dunham.
5. Petition of Fred L. Washburn filed June 30, 1921, to suspend the decree of February 27, 1920.
6. Order entered June 30, 1921, suspending the operation of the decree of February 27, 1920 as to Fred L. Washburn.
7. Order entered September 10, 1921, granting leave to Southern Wholesale Grocers Association to intervene.
8. Petition of National Wholesale Grocers Association filed September 19, 1921, for leave to intervene.
9. Petition in intervention of National Wholesale Grocers Association filed November 8, 1921.

10. Order entered May 1, 1925, suspending, as a whole, the operation of the decree of February 27, 1920..

11. Petition of Swift & Company filed July 24, 1929, to extend time for compliance with decree of February 27, 1920.

[fol. 1816] 12. Petition of Armour and Company filed July 24, 1929, to extend time for compliance with decree of February 27, 1920.

13. Decree entered July 24, 1929 on mandate of Supreme Court of the United States.

14. Order entered October 1, 1929, extending time for hearings on petitions of Swift & Company and Armour and Company to extend time for compliance with decree of February 27, 1920.

15. Petition of American Food Products Company, et al., filed October 2, 1929, for suspension of decree of February 27, 1920, as to Morris defendants.

16. Order entered October 2, 1929, suspending decree of February 27, 1920, as to Morris defendants.

17. Order entered November 4, 1929, extending time for hearings on petitions of Swift & Company and Armour and Company to extend time for compliance with decree of February 27, 1920.

18. Order entered November 13, 1929, extending time for hearings on petitions of Swift & Company and Armour and Company to extend time for compliance with decree of February 27, 1920.

19. Order entered December 19, 1929, extending time for hearings on petitions of Swift & Company and Armour and Company to extend time for compliance with decree of February 27, 1920.

20. Consents of Western Meat Company, et al. and New England Dressed Meat & Wool Company, et al. filed April 18, 1930, to modification of decree of February 27, 1920.

21. Opinion of Court filed June 28, 1930, overruling motion of American Wholesale Grocers Association and National Wholesale Grocers Association to strike the amended petitions of Swift & Company, et al. and Armour and Company, et al. for modification of the decree of February 27, 1920.

22. Order entered July 3, 1930, overruling motion of American Wholesale Grocers Association and National

Wholesale Grocers Association to strike the amended petitions of Swift & Company and Armour and Company for modification of the decree of February 27, 1920.

23. Petitioner's Exhibits Nos. 1, 2, 5, 6, 8, 9; 11 to 32, both inclusive; 40, 41, 58, 59 and 60, 61, 66, 67; 75 to 84, both inclusive; 87; 129 to 134, both inclusive; and 168 to 180, both inclusive.

24. Letter from Attorney General of United States to the President of the Senate, dated July 11, 1930, which is quoted in part at pages 69 to 70 of the record; also statements of court and reply of Government counsel relating to said [fol. 1817] letter at page 273 of the record.

25. This præcipe for designation of record.

Frank J. Hogan, Henry Veeder, Chas. J. Faulkner, Paul M. Godehn, & Nelson T. Hartson, Counsel for Swift & Company et al. and Armour and Company et al., Appellees.

Service of the foregoing præcipe is hereby acknowledged this 20th day of August, 1931.

John Lord O'Brian, The Assistant to the Attorney General, Counsel for the United States of America. Edgar Watkins, Counsel for American Wholesale Grocers Association. Frank K. Nebeker, Counsel for National Wholesale Grocers Association.

[fol. 1818] In Supreme Court of the District of Columbia

[Title omitted]

Stipulation for Inclusion of Exhibits in Record in Supreme Court

Petitioning defendants' exhibits numbered 76, 77, and 173, having been misplaced, it is hereby stipulated and agreed by and between the parties hereto, that at any time within thirty days before the oral argument of this cause, duplicate copies of said exhibits or such summaries of the relevant portions thereof as may be agreed upon by the parties hereto may be filed as part of the record of this cause in the Supreme Court of the United States with the

same force and effect as if filed at the time of the docketing of this cause.

John Lord O'Brian, John Lord O'Brian, The Assistant to the Attorney General. Frank J. Hogan, Nelson T. Hartson, Attorneys for Petitioning Defendants.

December 8, 1931.

[fol. 1819] MEMORANDA

March 31, 1931.—Time for docketing case with Clerk of the Supreme Court of the United States, extended from day to day to and including December 24, 1931.

Orders extending time for filing with Clerk Præcipes Designating Portions of the Record, filed from time to time.

[fols. 1820 & 1821] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1822] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA, Appellant,

v.

SWIFT & COMPANY et al.

On Appeal from the Supreme Court of the District of Columbia

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 11, 1931

I. Now comes the United States of America, appellant in the above-entitled cause, and pursuant to paragraph 9 of

rule 13 of this court states that the points upon which it intends to rely in this court in this cause are as follows:

1. That the Supreme Court of the District of Columbia erred in failing to dismiss the amended petitions herein of Swift & Company and others and of Armour & Company and others, for want of equity.

2. That said court erroneously found that there were proved any changes in conditions affecting the power of the defendants named in the consent decree of February 27, 1920, to restrain or monopolize interstate trade or commerce since the entry of the original decree sufficient to justify the modification thereof.

[fol. 1823] 3. That the findings of fact of the said court fail to support its conclusions of law.

4. That the findings of fact of the said court numbered 3, 5, 6, 11, 12, 13, 17, and 18 are not supported by substantial evidence.

5. That the conclusions of law of said court are not supported by any findings of fact supported by substantial evidence.

6. That the said court erred in finding that during the past ten years the increase in the use of motor trucks for the transportation of food products and the extending of the areas of their operation by reason of the great increase in good roads, and the increase in the transporting by motor truck of products by packers competing with defendants named in the aforementioned consent decree and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants named in the aforementioned consent decree of any advantage which the ownership of refrigerator cars formerly gave them; and that none of the defendants named in the aforementioned consent decree enjoys any undue preference or advantage by reason of its ownership of refrigerator cars.

7. That the said court erred in failing to find, although the fact appears upon all of the evidence, that the use by the defendants named in the aforementioned consent decree of their distributive facilities in the handling of the commodities specified in paragraphs Fourth and Fifth of the aforementioned consent decree is a more potent instrument

of monopoly at the present time than when the decree was entered.

8. That the said court erred in failing to find, although the fact appears upon all the evidence, that no substantial diminution, either relative or absolute, in the power and size of the defendants named in the aforementioned consent decree has occurred since the entry of the aforementioned consent decree.

[fol. 1824] 9. That the said court erred in failing to find, although the fact appears upon all the evidence, that the strength and power of the defendants named in the aforementioned consent decree, both relative and absolute, has increased since the entry of the aforementioned consent decree.

10. That the said court erred in finding, in the absence of substantial evidence, that if defendants named in the aforementioned consent decree were to engage in handling food products additional to products they are now dealing in, there is no probability that they could or would acquire a monopoly of or control the quantity and prices of the food produced and/or consumed in the United States.

11. That the said court erred in finding, in the absence of substantial evidence, that since 1920 conditions have materially changed in the methods of marketing food products by reason of the engaging by concerns retailing food on large scale in the functions usual to wholesale and branch house distribution, and in the functions of manufacturing and processing meat products and other foods.

12. That the said court erred in finding that the passage of the Packers and Stockyards Act, 1921, constitutes a change which would greatly limit the power of defendants named in the aforementioned consent decree to acquire a monopoly.

13. That the said court erred in concluding that none of the defendants named in the aforementioned consent decree is now engaged in violating, attempting, or threatening, to violate any of the provisions of the antitrust laws of the United States.

II. And the United States of America, appellant, further states that the entire record in this cause as filed in this

court is necessary for the consideration of the foregoing points, and that the transcript of record should be printed by the clerk of this court for the hearing in this cause in its entirety, together with those of the exhibits which have been certified to this court separately from the transcript of [fol. 1825] record, which, in the order of the Supreme Court of the District of Columbia, entitled, "Order Re Transcript of Record," dated December 8, 1931, are designated to be printed; and which are bound in two separate volumes entitled, respectively, "Petitioners' Exhibits To Be Printed," and "Government's Exhibits To Be Printed." This designation for printing is made without prejudice to the right of appellant to refer in its brief or upon argument to any of the original exhibits which have been transmitted to the clerk of this court by the clerk of the Supreme Court of the District of Columbia.

Respectfully submitted.

Thomas D. Thacher, Thomas D. Thacher, Solicitor General. John Lord O'Brian, The Assistant to the Attorney General. Hammond E. Chaffetz, Special Assistant to the Attorney General.

Service of the foregoing statement of points to be relied upon by the United States upon the appeal herein, and designation of parts of the record to be printed, and receipt of a copy hereof, are hereby admitted and acknowledged:

Frank J. Hogan, Nelson T. Hartson, Counsel for Appellees Swift & Company et al. and Armour & Company et al.

Dated Dec. 11th, 1931.

William C. Breed, Counsel for National Wholesale Grocers' Association.

Dated Dec. 11th, 1931.

Edgar Watkins, Counsel for American Wholesale Grocers' Association.

Dated Dec. 11th, 1931.

[fol. 1826] [Endorsed:] Form No. 680. No. —. In the Supreme Court of the United States. United States of

America, appellant, vs. Swift & Company et al., appellees. Statement of points to be relied upon and designation of parts of the record to be printed.

[fols. 1827 & 1828] [File endorsement omitted.]

[fol. 1829] In Supreme Court of the United States, October Term, 1931

No. 569

American Wholesale Grocers Association et al., Appellants,

vs.

Swift & Company et al., Appellees

Statement of Points to be Relied Upon and Designation as to Printing Record—Filed Dec. 11, 1931

Come now American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. H. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, appellants in the above entitled cause and state the points on which they intend to rely in this court in this case are as follows:

1. The court below lacked jurisdiction to enter its order appealed from in which the consent decree herein was modified because:

A. Petitioners therefor, appellees here, having delayed the filing of their petitions for more than nine years after the expiration of the term of the court at which the said decree was entered, the court had lost jurisdiction.

B. The decree modified being a consent decree, the trial court had no jurisdiction to modify the same without the

consent to the particular modification by the parties to the decree.

2. There was no substantial evidence and no findings of fact justifying the modification.

[fol. 1830] 3. The evidence and the findings of the court show continuing danger of monopoly and restraint of trade.

4. Petitioners, appellees here, relying on changed conditions wholly fail fairly to disclose the conditions prior to the entry of the decree.

5. The court having found numerous violations of the law against restraint of trade and monopolies, erred in disregarding such violations because not shown to have been authorized by or known to the executive officers of appellees.

6. Petitioners, appellees here, having received benefits from their consent to the decree modified herein, could not equitably while continuing to keep such advantages ask for a modification.

7. The evidence showing without dispute that petitioners, appellees here, obtained advantages from the use of peddler cars, it was error to permit them to retain such advantages and enter into competition contrary to their original consent decree.

8. Because the court erred in treating the extension of the business of chain stores as a ground for modification of the consent decree.

9. Because the court having found that appellees, petitioners below, had failed fully to disclose their condition, the court erred in granting the relief prayed for herein.

10. Because the findings of fact of the trial judge were not fully supported by the evidence and because the court erred in not making additional findings of fact which he was requested to make.

The foregoing points summarize the assignment of errors made by these appellants and appellants rely upon such assignments copied in the transcript herein.

[fol. 1831] Parts of the Record Necessary to be Printed

Other appellants have specified the parts of the record necessary to be printed and these specifications cover all the record necessary for the understanding of the issues made on this appeal and it is unnecessary to reprint such parts.

Respectfully submitted.

Edgar Watkins, Attorney for American Wholesale Grocers Association et al., Appellants, Atlanta, Georgia.

Service of the foregoing statement of points to be relied upon by the American Wholesale Grocers' Association upon the appeal herein, and designation of parts of the record to be printed, and receipt of a copy hereof, are hereby admitted and acknowledged.

Hammmond E. Chaffet, Special Assistant to the Attorney General.

Dated December 11, 1931.

Frank J. Hogan, Nelson T. Hartson, Counsel for Appellees Swift & Company et al. and Armour & Company et al.

Dated December 11, 1931.

William C. Breed, Counsel for National Wholesale Grocers' Association.

Dated December 11, 1931.

[fol. 1832] [File endorsement omitted.]

[fol. 1833] In Supreme Court of the United States, October Term, 1931

No. 570

National Wholesale Grocers Association,

against

Swift & Company et al.

Statement under Rule 13, Paragraph 9, by Intervener-appellant, National Wholesale Grocers' Association of the United States—Filed Dec. 11, 1931

I. The intervener-appellant, National Wholesale Grocers Association of the United States, hereby submits as the

statement of points on which it intends to rely, the following:

1. The court below had no power or jurisdiction, without the consent of the Government, which was not given, to modify the Consent Decree entered herein on February 27, 1920, and, consequently, should have granted the motion of this intervener for dismissal of the amended petitions.

2. The amended petitions did not state facts sufficient to entitle the petitioners to the relief granted below, or to any relief, and the motion of this intervener to dismiss said amended petitions on that ground should have been granted.

3. The petitioners have no standing to ask a court of equity to relieve them of the burdens imposed upon them by the decree of February 27, 1920, which was entered upon their consents, because, after receiving all the benefits of the agreement embodied in said decree, they have continuously failed and refused to perform the terms and conditions agreed to by them and, on the contrary, have ceased [fol. 1834] lessly sought to evade and defeat said decree; and the motion of this intervener for dismissal of the amended petitions for lack of equity should have been granted.

4. The evidence did not justify the modification of the Consent Decree granted by the court below, or any modification thereof.

5. The court below erred in the following respects:

(a) In making and entering the decree appealed from.

(b) In holding that the amended petitions stated facts sufficient to entitle petitioners to the relief granted, or any relief.

(c) In overruling the motions of this intervener to dismiss the amended petitions.

(d) In deciding that the court had power or jurisdiction to modify the Consent Decree and in receiving evidence upon the amended petitions.

(e) In modifying said Consent Decree without the consent of the Government.

(f) In refusing to dismiss the amended petitions for lack of equity.

(g) In not finding and deciding that there is danger of monopoly and restraint of interstate trade and commerce by and on the part of the defendants.

(h) In deciding that the evidence showed such changes in conditions since the entry of the Consent Decree as to justify the modification thereof.

[fol. 1835] (i) In decreeing the modification of said Consent Decree without evidence or findings of fact or conclusions of law justifying such modification.

(j) In granting such modification notwithstanding the finding in its filed opinion and decision herein that there had been on the part of petitioners "a failure to make a full disclosure of the facts" respecting their earnings; the further finding therein that "all the defendants combined control over 70%" of the interstate commerce in meat packing; and the further finding therein that certain of the unfair practices charged by the United States against the petitioners "are substantially true."

(k) In that the court's Findings of Fact, and particularly Findings numbered 5, 12 (e), 13, 17, 18 and 21, are not supported by the evidence; and in that Findings numbered 5 and 13 are at variance with the Findings stated in the said opinion and decision of the court.

(l) In that the Findings of Fact, and particularly the Findings numbered 12, 13, 17 and 18, are immaterial in so far as they state or indicate that there is no existing monopoly or restraint of interstate trade or commerce on the part of the defendants; and are speculative and at variance with the evidence and with the said opinion and decision as respects future monopoly, domination or restraint of [fol. 1836] interstate trade or commerce by the defendants, and the danger and potentiality thereof; and the court further erred in its Findings of Fact in that there is no evidence that any lack of monopoly or restraint of trade or commerce is not the result of said Consent Decree.

(m) In that the court's Conclusions of Law are erroneous, and particularly in that the Conclusions numbered 1, 6 and 7 are in conflict with the evidence and with the facts found in said opinion and decision and, further, are erroneous for the reason that it is established that the said Consent Decree is essential in order to maintain any existing competitive conditions among the defendants in the food industry, and the further reason that there is no evidence and no Finding of Fact based on evidence showing that the maintenance of said Consent Decree is not essential to prevent monopoly, and restraint of interstate trade or commerce.

(n) In that Conclusions of Law numbered 2 to 7, inclusive, are erroneous statements of law.

(o) In failing to make or to rule upon the proposed findings submitted to the court by this intervener.

(p) In that the Findings of Fact and Conclusions of Law are otherwise erroneous as shown in the exceptions on file herein.

II. This intervener-appellant submits that the parts of the record (in addition to the portions designated by the [fol. 1837] Government) which are necessary for the consideration of the foregoing points are as follows:

1. Memorandum decision by Mr. Justice Stafford, filed November 1, 1921, on motion of United States of America to strike petition to intervene.

2. Order filed November 5, 1921 by Mr. Justice Stafford allowing National Wholesale Grocers' Association of the United States to intervene herein.

3. Memorandum opinion by Mr. Justice Bailey, filed herein April 23, 1925.

4. Decree suspending in whole operation of Consent Decree, filed May 1, 1925.

5. Motions of this intervener, filed April 12, 1930, to dismiss the amended petitions of the defendants herein.

6. Memorandum opinion of Mr. Justice Bailey of this Court, filed June 28, 1930, overruling motions of American Wholesale Grocers' Association and National Wholesale Grocers' Association of the United States, interveners, to dismiss defendants' amended petitions.

7. Order of this Court, filed July 3, 1930, overruling said interveners' motions to dismiss the amended petitions of defendants.

8. Answers of this intervener filed July 22, 1930 to amended petitions of defendants, Swift & Company and others, and Armour & Company, and others, for modification of the Consent Decree of February 27, 1920.

9. Motion of intervener-appellant, National Wholesale Grocers' Association of the United States to dismiss amended petitions of defendants, the Court's ruling thereon and the exception noted, being page 45 of the official stenographic report of the proceeding herein.

[fol. 1838] 10. Objections of intervener-appellant, National Wholesale Grocers' Association of the United States to testimony, the Court's ruling thereon and the exception to such ruling, being pages 88 and 89 of the official stenographic report of the proceeding herein.

11. Formal objections of intervener-appellant, National Wholesale Grocers' Association of the United States to testimony, being pages 274-277, inclusive, of the official stenographic report of the proceeding herein.

12. Proposed Findings of Fact in behalf of American Wholesale Grocers' Association and National Wholesale Grocers' Association dated December 1, 1930.

13. Intervener-appellants' exceptions to this Court's Findings of Fact and Conclusions of law, filed March 30, 1931.

14. This intervener's petition for appeal, the order of this Court thereon, this intervener's citation on appeal and its notice of appeal, and the acknowledgments and proofs of service thereof.

15. This intervener's assignment of errors on appeal and proofs of service thereof.

16. This intervener's præcipe, and notice of filing thereof with the acknowledgments or proofs of service thereof.

17. Orders extending the time of intervener-appellant, National Wholesale Grocers' Association of the United States for filing præcipe and for docketing the case with the Clerk of the Supreme Court of the United States.

The foregoing designation is made subject to the request [fols. 1839 & 1840] that none of the matter designated be printed more than once in the record, and is made without prejudice to the rights of this appellant to refer, in briefs

or upon argument, to any of the original exhibits which have been transmitted to the Clerk of this Court by the Clerk of the Supreme Court of the District of Columbia.

Dated December 10th, 1931.

Respectfully submitted.

William C. Breed, William C. Breed, Breed, Abbott & Morgan, Attorneys for National Wholesale Grocers' Association of the United States.

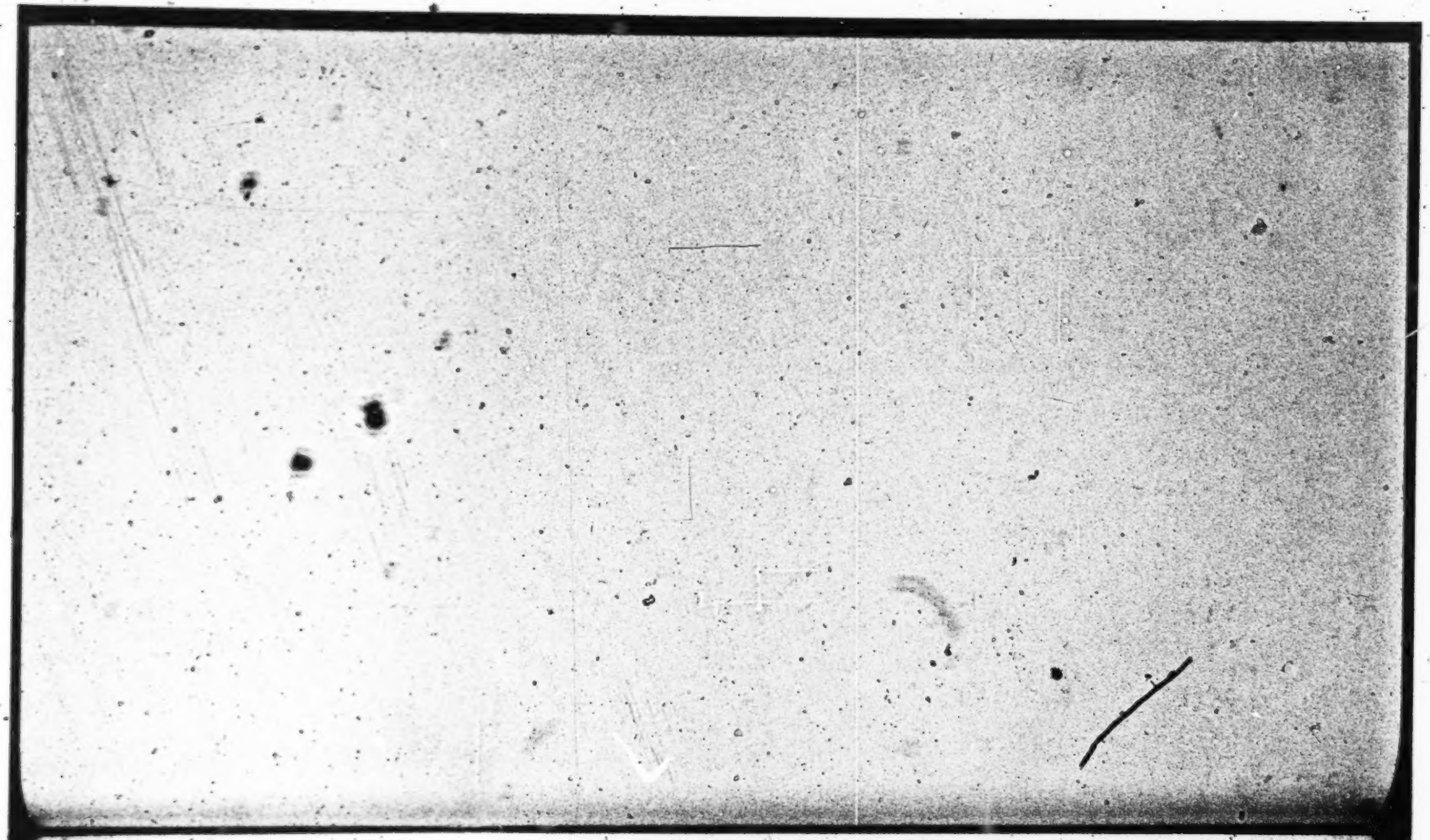
To Charles Elmore Cropley, Esq., Clerk of the Supreme Court of the United States.

Service of the foregoing statement is hereby acknowledged this 11th day of December, 1931.

John Lord O'Brian, The Assistant to the Attorney General, Counsel for the United States of America. Frank J. Hogan, Nelson T. Hartson, Counsel for Swift & Company et al. and Armour & Company et al., Appellees. Edgar Watkins, Counsel for American Wholesale Grocers' Association.

[fol. 1841] [File endorsement omitted.]

Endorsed on cover: File Nos. 36,382, 36,383, 36,384. District of Columbia Supreme Court. Term No. 568. The United States of America, appellant, vs. Swift & Company et al. Term No. 569. American Wholesale Grocers Association et al., appellants, vs. Swift & Company et al. Term No. 570. National Wholesale Grocers Association, appellant, vs. Swift & Company et al. Filed December 10, 1931. File Nos. 36,382, 36,383, 36,384.



FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

MOTION BY THE UNITED STATES TO ADVANCE

The Solicitor General pursuant to Rule 20, paragraph 6, of this Court moves to advance the above-entitled cause for a hearing on or as near the 7th day of March, 1932, as may be agreeable to the Court.

This is a suit in equity brought by the appellees herein to modify a consent decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in which the appellees and others were named as defendants. The consent decree was entered in a proceeding brought by the United States under Section 4 of the Act of July 2, 1890, c. 647, 26 Stat. 209, commonly known as the

Sherman Antitrust Act, and Section 15 of the Act of October 15, 1914, c. 323, 38 Stat. 730, 736, commonly known as the Clayton Act, to restrain and enjoin the appellees herein and other defendants named in the consent decree from further violations of those Acts. The defendants named in the consent decree are enjoined thereby, among other things, from continuing to hold capital stock in public stockyard market companies and terminal railroads, and from continuing to handle and deal in commodities unrelated to the meat-packing industry, such as wholesale groceries and canned goods.

In its October Term, 1927, this Court decided that the consent decree was valid. *Swift & Company* v. *United States*, 276 U. S. 311.

The consent decree was again before this Court in its October Term, 1928, on writ of certiorari to review an order of the Court of Appeals of the District of Columbia refusing to vacate its judgment reversing an order of the Supreme Court of the District denying a motion of the California Cooperative Canneries for leave to intervene in the original suit for the purpose of seeking to have the consent decree set aside. This Court decided that the Court of Appeals of the District of Columbia was without jurisdiction to act in the matter. *United States* v. *California Cooperative Canneries*, 279 U. S. 553.

The present suit to modify the consent decree was brought August 10, 1929, the petitions for modification alleging that economic and other conditions

had so changed that the principal prohibitions of the decree should be eliminated. Issue was joined, and after trial the Supreme Court of the District of Columbia on January 31, 1931, entered an order modifying the consent decree so as to permit the defendants named therein to engage once more in the handling at wholesale of food lines unrelated to the meat-packing industry.

The petition of the United States for an appeal to this Court was allowed on March 30, 1931.

An early decision of this appeal is of importance to the public generally as well as to those engaged in the business of handling food products.

THOMAS D. THACHER,
Solicitor General.

DECEMBER, 1931.

Counsel for appellees consent to the granting of this motion.

FRANK J. HOGAN.
HENRY VEEDER.
CHAS. J. FAULKNER, JR.
NELSON T. HARTSON.

U. S. GOVERNMENT PRINTING OFFICE: 1931

FILE COPY

Office Sup
DEC

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA

v.

SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

MOTION TO ADVANCE BY AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL.

By EDGAR WATKINS,
Citizens & Southern National Bank Building, Atlanta, Georgia, Counsel for American Wholesale Grocers Association et al.

MAC ASBILL,
EDGAR WATKINS, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA

v.

SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

MOTION TO ADVANCE BY AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL.

Come now American Wholesale Grocers Association, Henry G. Sears & Company, ~~of~~ Massachusetts;

John Hoffman Co., of Wisconsin; Mason, Ehrman & Company, of Oregon; J. H. Radford Grocery Company, of Texas; Southern Distributing Company, of Virginia; Hall Grocery Company, of Arkansas; Albert Mackie & Co., Ltd., of Louisiana; Hicks Company, of Louisiana; Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and move to advance Number 569 above, in which movants are appellants, and respectfully show:

That the United States of America, appellant in Docket 568 above, and National Wholesale Grocers Association, appellant in Docket 570 above, have moved to advance this cause for a hearing to a date on or as near the 7th of March, 1932, as may be agreeable to the Court, and these appellants concur in said motions and adopt the statements therein as reasons for this motion. All of said cases, shown in the heading hereof, are to be decided on the same record and most of the issues are common to all the dockets.

WHEREFORE these appellants pray that this, their motion, be granted and the hearing of said causes be advanced.

EDGAR WATKINS,
Counsel for Appellants in Docket 569.

Counsel in all dockets acknowledge receipt of copy of the above and foregoing motion.

This December 30th, 1931.

JOHN LORD O'BRIAN,
Assistant to the Attorney General, Counsel for United States of America;
FRANK J. HOGAN,
NELSON T. HARTSON,
Counsel for Appellees in all Dockets;
WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
Counsel for Appellants in Docket 579.

FILE COPY

Nos. 568-569-570.

F
DEC
CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

UNITED STATES OF AMERICA,

v.

SWIFT & COMPANY, *et al.*

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, *et al.*

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, *et al.*

On appeal from the Supreme Court of the District of Columbia.

MOTION BY NATIONAL WHOLESALE GROCERS ASSOCIATION TO ADVANCE.

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers Association of the United States,
15 Broad Street,
Borough of Manhattan,
City of New York.

Nos. 568-569-570.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

UNITED STATES OF AMERICA,

v.

SWIFT & COMPANY, *et al.*

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, *et al.*

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, *et al.*

On appeal from the Supreme Court of the District of Columbia.

MOTION BY NATIONAL WHOLESALE GROCERS ASSOCIATION TO ADVANCE.

The National Wholesale Grocers Association, pursuant to Rule 20, paragraphs 5 and 6, of this Court, moves to advance the above entitled cause for a hearing on or as

near the 7th day of March, 1932, as may be agreeable to the Court.

The United States of America, by Honorable Thomas D. Thacher, Solicitor General, has moved this Court to advance the above entitled cause for a hearing on or as near the 7th day of March, 1932, as may be agreeable to the Court.

In the Government's motion papers the facts of the case are briefly outlined beginning with the entry of the consent decree by the Supreme Court of the District of Columbia on February 27, 1920, and it will not be necessary for the National Wholesale Grocers Association again to set forth these facts.

The petition of the National Wholesale Grocers Association for an appeal to this Court was allowed on March 31, 1931.

On November 5, 1921, the National Wholesale Grocers Association was granted leave to intervene in this suit of United States of America against Swift & Company, *et al.*, and an order was entered to that effect by Mr. Justice Wendell P. Stafford, of the Supreme Court of the District of Columbia.

Since the granting of said order of November 5, 1921, allowing intervention, the National Wholesale Grocers Association, intervener, has actively opposed all of the efforts of the defendant packers to secure a vacation or modification of the consent decree, submitted briefs and participated in the oral arguments before the United States Supreme Court. As the result of these proceedings said decree was held to be valid and binding and was ordered to be enforced (276 U. S. 311; 279 U. S. 553).

In the present proceedings by the packers for modification of the said consent decree this intervener appeared,

filed answers to the petitions, examined and cross-examined witnesses, and submitted briefs and oral arguments in opposition to the requested modifications.

There is but one case and one record before this Court and in it are incorporated testimony, exhibits and other documents submitted during the present proceeding before the Supreme Court of the District of Columbia. The said record is captioned "No. 568, United States of America *v.* Swift & Company, *et al.*, No. 569, American Wholesale Grocers Association *v.* Swift & Company, *et al.*, No. 570, National Wholesale Grocers Association *v.* Swift & Company, *et al.*"

The United States of America moved this Court to advance the cause under Rule 20, paragraph 6, of the Rules of this Court, inasmuch as the United States is a party.

The National Wholesale Grocers Association is also a party by reason of its intervention pursuant to said above-mentioned order of November 5, 1921. Its interest in this litigation is closely associated with that of the Government. Its appeal should be heard at the same time.

This matter has been adjudicated by this Court upon the merits (276 U. S. 311) and for this additional reason the National Wholesale Grocers Association moves this Court, under Rule 20, paragraph 5. An early decision of this appeal is of importance to those engaged in the business of handling food products and to the public generally and for these reasons it is respectfully urged that the appeal of the National Wholesale Grocers Association be

advanced for hearing to the same date as the Government's appeal will be heard.

Dated, December 28, 1931.

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers Association of the United States,
15 Broad Street,
Borough of Manhattan,
City of New York.

FILE COPY

No. 568

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, the United States of America, appellant, submits herewith its statement showing the basis of the jurisdiction of this Court in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the decree here complained of is conferred by the Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823, known as the Expediting Act (U. S. C., Title 15, Sec. 29), and by Section 238 of

the Judicial Code, as amended by the Act of February 13, 1925.

B

DATES OF DECREE AND APPLICATION FOR APPEAL

The final decree sought to be reviewed was entered on January 31, 1931. (Cumulative [1] p. 1650.) The petition for appeal was presented and filed and the order allowing the appeal was made and entered on March 30, 1931. (Petition for appeal, cumulative p. 1737; order allowing appeal, cumulative p. 1738.) The citation and acknowledgment of service thereof were filed on March 30, 1931. (Cumulative pp. 1739, 1740.) Extension of time was granted for docketing the case with the clerk of this Court until December 24, 1931. (Cumulative p. 1819.) The case was docketed December 10, 1931.

C

NATURE OF THE CASE

This cause was instituted by two petitions brought by the appellees herein to modify the provisions of a consent decree entered on February 27, 1920, in which the appellees and others were named as defendants. The consent decree was entered in a proceeding brought by the United

[1] The Record has not yet been printed. The cumulative page numbers refer to the pages of the Record (partly printed and partly typewritten), transmitted by the clerk of the court below, counting consecutively from p. 1 of the Petition.

States under the provisions of Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, commonly known as the Sherman Antitrust Act, and Section 15 of the Act of October 15, 1914, c. 323, 38 Stat. 730, 736, commonly known as the Clayton Act, to prevent and restrain the defendants named in the consent decree from further monopolizing or attempting to monopolize interstate trade and commerce in food products (Petition, cumulative pp. 1–17). See *Swift & Company* v. *United States,* 276 U. S. 311.

In an opinion filed January 5, 1931, unreported, the Supreme Court of the District of Columbia held that changes in conditions had been proved warranting the modification of the consent decree in specified respects. (Opinion, cumulative pp. 1629–1652.)

The final decree entered on January 31, 1931, directed the modification of the consent decree so as to release the defendants named therein from certain of its prohibitions.

D

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

Swift & Company v. *United States,* 276 U. S. 311.

United States v. *California Cooperative Canneries,* 279 U. S. 553.

United States v. *International Harvester Co.*, 274 U. S. 693.

Paramount Famous Lasky Corp. v. *United States*, 282 U. S. 30.

United States v. *First National Pictures, Inc.*, 282 U. S. 44.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

HAMMOND E. CHAFFETZ,
Special Assistant to the Attorney General.

DECEMBER, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 568.

UNITED STATES OF AMERICA

v.

SWIFT & COMPANY ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

RULE TWELVE STATEMENT.

By EDGAR WATKINS,
Citizens & Southern National Bank Building, Atlanta, Georgia, Attorney for American Wholesale Grocers Association et al.

MAC ASBILL,
EDGAR WATKINS, JR.,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 568.

UNITED STATES OF AMERICA

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No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

RULE TWELVE STATEMENT.

Come now American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts; John

Hoffman & Sons, of Wisconsin; Mason, Ehrman & Company, of Oregon; J. H. Radford Grocery Company, of Texas; Southern Distributing Company, of Virginia; Hall Grocery Company, of Arkansas; Albert Mackie & Co., Ltd., of Louisiana; Hicks Company, of Louisiana; Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and, complying with amended Rule Twelve of this Court, respectfully show:

A. The general jurisdiction of this appeal has been sustained on former appeals herein and is authorized by Expediting Act of February 11, 1903, c. 544, sec. 2, 32 Stat. 823. See *Swift & Company* v. *United States*, 276 U. S. 311; *United States* v. *California Cooperative Canneries*, 279 U. S. 552.

B. The date of the decree sought to be reviewed herein is January 31, 1931 (R. 1650), and this decree was amended February 26, 1931 (R. 1653). Appellants' petition for appeal was presented and the appeal granted on the 30th day of March, 1931, and there was filed therewith an assignment of errors, a citation of error was issued, and a bond was given (R. 1748, 1749, 1730, 1750).

C. The nature of the case grew out of a consent decree rendered February 27, 1920 (R. 118). A predecessor of this Association filed an intervention in the proceedings in which said consent decree was entered September 11, 1921, and this petition was granted and the intervention filed (R. 134, 145, 146). An amend-

ment to the intervention was filed October 13, 1921 (R. 141). A motion to strike this intervention was made, a hearing had thereon, and on November 1, 1921, the motion was overruled in a memoranda opinion, in which opinion it was stated that these interveners-appellants had a special interest in the matter (R. 145, 146). The suit in which the original consent decree was entered was a suit brought under the Anti-Trust laws of the United States against the appellees here and the intervention of these appellants was on behalf of the decree and in support thereof. On the 2nd day of April, 1930, appellees, the Swift & Company and Armour & Company defendants, filed their amended petitions to modify or annul the original consent decree (R. 164, 235). To this petition these appellees filed first motions to strike the petitions (R. 303, 306), which motions were denied (R. 311), and thereafter these appellees filed answers to said petitions for modification (R. 318, 334).

The intervention herein was filed under the authority of Equity Rule 37 of this Court and of Equity Rule 13 of the Supreme Court of the District of Columbia. That interveners specially interested as are the appellants here may appeal has been decided by this Court in several cases. See *Williams* v. *Morgan*, 111 U. S. 684, 696, 698, 699; *Gest* v. *Packwood*, 14 Sawy. 146; *Re Michigan Central R. Company*, 124 F. 727, opinion by Circuit Judge Lurton, citing *Ex parte Jordan*, 94 U. S. 248; *Hamlen* v. *Toledo; etc., R. Co.*, 78 F. 664, and *Williams* v. *Morgan*, above. Compare *United States* v. *St. Louis Terminal Company*, 236

U. S. 194; *Continental Insurance Company* v. *United States*, 259 U. S. 196.

Respectfully submitted,

EDGAR WATKINS,
Attorney for American Wholesale Grocers Association et al.

Service of a copy of the foregoing statement in type was accepted and receipt of copies acknowledged and statement filed December 11, 1931, and this printed copy has also been furnished to all interested counsel.

EDGAR WATKINS,
Attorney, General Counsel for Appellants, American Wholesale Grocers Association, et al.

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DEC

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

UNITED STATES OF AMERICA,

v.

SWIFT & COMPANY, ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, ET AL.

Statement Under Rule 12, Paragraph 1, by Intervener-Appellant, National Wholesale Grocers Association of the United States.

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers Association of the United States,
15 Broad Street,
Borough of Manhattan,
City of New York.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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OCTOBER TERM, 1931.

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UNITED STATES OF AMERICA,

v.

SWIFT & COMPANY, ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

v.

SWIFT & COMPANY, ET AL.

Statement Under Rule 12, Paragraph 1, by Intervener-Appellant, National Wholesale Grocers Association of the United States.

This appeal is taken pursuant to the Expediting Act (U. S. Code, Title 15, Chap. 1, Sec. 29) which provides:

> "In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section,

> wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

The "laws mentioned in the preceding section" are U. S. Code, Title 15, Chap. 1, Secs. 1-7, inclusive (Sherman Act), and Sec. 25 (Clayton Act).

The Supreme Court of the District of Columbia is a "district court of the United States" within the meaning of the above-quoted provision.

Swift & Co. v. United States, 276 U. S. 311.

That provision applies with equal force to appeals by interveners as to appeals by the original parties.

U. S. v. California Cooperative Canneries, 279 U. S. 553, 559.

In *Continental Co. v. United States,* 259 U. S. 156, the appeals under the Expediting Act were taken by interveners (See page 164).

By an order of the Supreme Court of the District of Columbia, entered November 5, 1921 (Cumulative* p. 146) National Wholesale Grocers Association of the United States was granted leave to intervene in the above-entitled suit for the purpose and to the extent of being heard

> *"in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree."*

*The Record has not yet been printed. The cumulative page numbers refer to the pages of the Record (partly printed and partly typewritten) transmitted by the clerk of the court below, counting consecutively from p. 1 of the Petition.

Since the granting of said order this intervener has actively cooperated in the Government's efforts to sustain said Consent Decree and to restore it to effective operation. When the question of the validity of the Consent Decree was before this Court (*Swift & Co. v. United States,* 276 U. S. 311), this intervener supported the position of the Government with brief and oral argument and its status as a proper party was not questioned. In the present proceeding this intervener was active in opposing modification of the Consent Decree, and its right to appear and participate as a party litigant was fully recognized by the court below (R. 398, 399, 401, Statement of Evidence, p. 1316).

The Decree appealed from, which was granted upon the petitions of certain of the defendants and *without the consent of the Government,* deprived this intervener of all the protection secured to it by the Consent Decree by permitting the defendants to manufacture, sell and deal in the commodities specified in paragraphs "Fourth" and "Fifth" of the Consent Decree (R. 1650, 1653, 1629).

The Decree sought to be reviewed was entered on the 31st day of January, 1931, and was amended by an order dated February 26, 1931 (R. 1650, 1653).

This intervener's application for the appeal was presented and allowed on the 31st day of March, 1931 (R. 1757, 1758). The citation and acknowledgment of service thereof were filed March 31, 1931 (R. 1760, 1763). Extension of time was granted for docketing the case with the Clerk of this court until December 24, 1931 (R. 1819).

This is a suit in equity brought by the Government against Swift & Co. and other Chicago Meat

Packers under the Anti-Trust Laws and resulted in the entry on February 27, 1920, of a Consent Decree (R. 1, 118), which has heretofore been passed upon by this court and held to be valid and binding (276 U. S. 311; 279 U. S. 553). As already stated, the Decree appealed from materially modified said Consent Decree without the Government's consent and deprived this intervener of the protection secured to it by said Consent Decree.

The following decisions of this court are believed to sustain the jurisdiction of this court:

U. S. v. California Cooperative Canneries, 279 U. S. 553;

Swift & Co. v. U. S., 276 U. S. 311;

Interstate Commerce Commission v. Baird, 194 U. S. 25;

Continental Co. v. U. S., 259 U. S. 156, 164;

U. S. v. International Harvester Co., 274 U. S. 693;

Paramount-Famous Lasky Corp. v. U. S., 282 U. S. 30;

U. S. v. First National Pictures, 282 U. S. 44.

Dated: December 11, 1931.

Respectfully submitted,

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers Association of the United States,
15 Broad Street,
Borough of Manhattan,
City of New York.

Service of the foregoing statement is hereby acknowledged this 11th day of December, 1931.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General Counsel for the United States of America.

FRANK J. HOGAN, NELSON T. HARTSON,
Counsel for Swift & Company, et al., and Armour & Company, et al., Appellees.

EDGAR WATKINS,
Counsel for American Wholesale Grocers' Association.

FILE COPY

No. 568

In the Supreme Court of the United States

OCTOBER TERM, 1931

THE UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Supreme Court of the District of Columbia (R. 1039) is unreported.

JURISDICTION

The order of the lower court modifying the decree of February 27, 1920, was entered January 31, 1931. (R. 1060.) Petition for appeal was filed March 30, 1931, and was allowed on the same day. (R. 1125, 1126.)

Jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, c. 544, 32 Stat.

823 (U. S. C., Title 15, Sec. 29), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345.) *Swift & Co.* v. *United States*, 276 U. S. 311.

QUESTIONS PRESENTED

The fundamental question presented is whether there have been changes since 1920 which warrant modifying the provisions of the 1920 consent decree which enjoined the defendant packers from dealing in certain commodities not related to the meat industry and from using their distributive facilites for handling these commodities. Other questions presented, preliminary to this question, are (1) the purpose and object of the decree in imposing these restraints and (2) the character of the changes which would warrant removing these restraints.

The intervener wholesale grocers' associations have also raised the question of the power of the court below to modify the decree without the consent of the Government. The Government has conceded that the power of the court to modify the consent decree is the same as its power to modify a decree entered after litigation.

STATUTE INVOLVED

The Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., Title 15, Secs. 1, 2, and 4), known as the Sherman Antitrust Act, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy,

in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * *

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be

enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

STATEMENT

This is a direct appeal from an order entered by the lower court modifying in certain respects a consent decree entered in that court on February 27, 1920. (R. 153, 1060.) After the essential validity of the consent decree had been sustained (*Swift & Company* v. *United States*, 276 U. S. 311; *United States* v. *California Cooperative Canneries*, 279 U. S. 553), appellees filed their petitions to modify the decree upon the ground of alleged changes in economic and other conditions. The Government contends that neither the lower court's findings nor the evidence support the order modifying the decree and that its effect is to attack collaterally a decree which is immune from direct attack.

The Government's original bill, brought under Section 4 of the Sherman Antitrust Act and Section 15 of the Clayton Act, named as defendants the five leading meat packing companies[1]—Swift &

[1] These five defendants, now reduced by merger to four, will be hereinafter sometimes refered to as "defendants."

Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company—and numerous subsidiary corporations and individuals, the latter chiefly officers of the principal defendants. (R. 1–7.) The bill alleged that the defendants, whose business originally was the purchase and slaughter of livestock and the preparation and sale of its products, had not only extended these operations until they were nation-wide but had also added large dealings in foods other than meats and in many other commodities; that by various methods set out in the bill they had built up an unlawful monopoly and control of a great portion of the food supply of the nation; and that they were attempting to extend this monopoly. (R. 8–20.) It alleged that the defendants were aided in their combination by their great size; by their control of stockyard companies, stockyard terminal railroads, and stockyard newspapers, which, in turn, enabled them to control the assignment of livestock pens and office space to commission men and dealers on the yards, the leasing of land at the yards for independent packing plants, the furnishing of transportation facilities to the yards, and the dissemination of market information to shippers of livestock, and thereby influence to their own advantage the flow of livestock to market; by unlawful agreements, particularly so-called percentage purchase agreements, for the purchase by each of standing percentages of livestock at the various

markets; and by their ownership and operation of private refrigerator cars, route cars, branch houses, and storage warehouses, which, it was alleged, gave to the defendants peculiar advantages over their competitiors in the handling of commodities unrelated to meats. (R. 8–20.) The bill prayed for an injunction and for the divestiture of certain of the instrumentalities employed in the attempt to monopolize. (R. 21–22.)

Simultaneously with the filing of the bill, answers and a stipulation signed by all the parties were filed. (R. 23, 49, 76, 108, 127, 139, 145, 150.) The stipulation provided for the entry of a decree, without any findings of fact, upon the terms therein set forth, and provided that the decree "shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States." (R. 150.) The decree, also entered on the same date, not merely enjoined continuance of the attempt to monopolize and the use of illegal practices but deprived the defendants of the means whereby the attempt was being accomplished. (R. 153–167.) The defendants were enjoined from (1) holding any interest in public stockyard companies, stockyard terminal railroads, or market newspapers; (2) engaging in, or holding any interest in, the business of manufacturing, selling, or transporting (except as common carriers) any of 114 enumerated food products (principally fish, vegetables, fruits, and grocery items) and 30 other articles deemed unre-

lated to the meat packing industry (both the substitute food items and other commodities being hereinafter sometimes referred to as "unrelated lines"); (3) using their distributive facilities or permitting others to use them for the handling of any of these enumerated articles; (4) selling meat at retail; (5) holding any interest in any public cold-storage plant; and (6) selling fresh milk or cream. (R. 153–167.)

Appellees' petitions for modification,[2] with which this proceeding originated, in effect asked that each of the specific prohibitions of the decree be removed, leaving only the general injunction against conspiracy. (R. 200, 255.) While appellees purported to seek merely modifications, in substance they sought to have the decree nullified. They requested permission (1) to own and operate retail food stores; (2) to own interests in public stockyards and stockyard terminal railroads; (3) to manufacture and deal in unrelated lines; (4) to use, or permit others to use, their distributive facilities for all purposes; and (5) Swift & Company, in addition, asked that the defendants be permitted to hold interests in public cold-storage warehouses and to sell fresh milk and cream. (R. 244, 309–310.)

---

[2] Separate petitions for modification were filed by Swift & Company and its officers and subsidiary corporations, defendants in the original proceeding, and by Armour & Company and its officers and subsidiary corporations, defendants in the original proceeding.

The Southern Wholesale Grocers' Association[1] and others (appellants in No. 569) and the National Wholesale Grocers Association (appellant in No. 570), who had been permitted to intervene in 1921 for the purpose of being heard in opposition to any modification of the decree, filed motions to dismiss the petitions. (R. 174, 188, 310, 313, 315, 316.) After the court had overruled these motions, the United States filed answers calling for proof of the allegations of the petitions, and answers were filed by the foregoing interveners. (R. 319, 321, 322 334, 346, 368.) The lower court, after a hearing, entered an order modifying the original decree so as to permit the defendants to manufacture and deal in unrelated lines, except at retail, and to use or to permit others to use their distributive facilities for this purpose. (R. 1060.)

A proper appreciation of the issues which are here presented requires some review of the history of the case. The consent decree entered in 1920 climaxed two decades of litigation involving alleged violations of the antitrust laws by the defendants. See *Stafford* v. *Wallace*, 258 U. S. 495, 499–500. In 1903 the Government filed a bill in equity charging a conspiracy to control the purchase of livestock and the sale and distribution of meat products. A demurrer filed by the packers was overruled and an injunction issued, which this Court sustained. *United States* v. *Swift & Company*, 122 Fed. 529;

[1] The name of this association was later changed to American Wholesale Grocers' Association. (R. 191.)

Swift & Company v. *United States*, 196 U. S. 375. There followed in 1905 a criminal indictment. The defendants did not answer on the merits, but attacked the grand jury procedure and filed a demurrer. These were overruled, but claims of immunity based upon previous testimony before a public official were sustained as to the individual defendants, and the indictments were then dismissed as against the corporations. A further indictment was returned against the Swift, Armour, and Morris groups of defendants in 1910 when they joined in organizing the National Packing Company. After claims of immunity and demurrers had been overruled (*United States* v. *Swift & Company*, 186 Fed. 1002; *United States* v. *Swift*, 188 Fed. 92), the defendants were acquitted, but threat of a civil suit resulted in dissolution of the National Packing Company and distribution of its assets among the three packers. (Cong. Rec., Vol. 61, pt. 2, p. 1865.) In 1917 the President directed the Federal Trade Commission to investigate the meat-packing industry and the Government's original bill in this case followed the facts disclosed and the charges made in the Commission's voluminous report of its investigation.

There seems little doubt that all parties to the consent decree, both the Government and the five principal packers, intended thereby finally to determine the rights of the respective parties under the antitrust laws of the United States. The conclusion that the consent decree was a final adjudica-

tion intended to bring the packers within the law must have been reinforced when in 1921 Congress, to supplement the provisions of the decree and to strengthen its effect, passed the Packers and Stockyards Act (42 Stat. 159) placing large stockyards under public supervision and transferring to the Secretary of Agriculture jurisdiction over packers in respect of acts and practices violative of the antitrust laws. That Congress did not make the provisions of this Act even more stringent may have been due to the prohibitions of the consent decree. (Cong. Rec., Vol. 61, pt. 2, pp. 1860–1862; R. 1056.)

There is some indication that almost from the time the decree was entered appellees intended to attack it. As previously stated, the two appellant associations of wholesale grocers were in 1921 permitted to intervene to oppose any change in the consent decree. (*Supra*, p. 8.) In 1922 the California Cooperative Canneries Corporation sought to intervene to have the decree vacated upon the ground that the decree interfered with its contractual relations with Armour & Company. While litigation growing out of this petition of intervention was pending, the Swift and Armour groups of defendants in 1924 filed motions to vacate the decree. This Court sustained the order of the Supreme Court of the District of Columbia overruling these motions and upheld in every respect the validity of the consent decree. *Swift & Co.* v. *United States*, 276 U. S. 311, *supra*.

Whether appellees' purpose was justified or not, the fact remains that over a period of almost twelve years they have avoided full and complete compliance with the decree entered by consent in 1920. The effect of the attempted intervention [4] of the California Canneries and of the decision thereon by the Court of Appeals of the District of Columbia, which this Court held erroneous (*United States* v. *California Cooperative Canneries*, 279 U. S. 553, *supra*), was to suspend the operation of the decree from May 1, 1925, to July 24, 1929, the date when the lower court entered a decree upon the mandate of this Court in the *Canneries* case. (R. 194, 195.) Upon the day this decree was entered the Swift and Armour groups of defendants filed petitions to extend the time for compliance. (R. 196, 198.) The court set October 2, 1929, for a hearing thereon and extended the time for compliance until that date. (R. 196.) Appellees' original petitions for modification of the decree were filed prior to October 2, 1929, and hearing on the requested extensions was postponed to the hearing on these

[4] The record in the present case discloses the close financial relationship existing between California Canneries and Armour & Company. At the time of the trial below the California Canneries owed Armour between $1,400,000 and $1,500,000, and the California Canneries had had to borrow from Armour funds necessary for working capital. (R. 715.) In addition, Armour had guaranteed accounts on which the California Canneries then owed $350,000. (R. 715.)

petitions. (R. 1041.) In the final order entered herein on January 31, 1931, the defendants were given an extension of one year from the date thereof "to complete their disposition, in accordance with the terms of said consent decree, of any properties or interests now held contrary to the provisions of said decree." (R. 1062.) Armour's sales at wholesale of unrelated lines, which the decree prohibited, have varied considerably, but in no year since 1920 have they been less than $2,300,000 and during the last three full years for which figures are available (1927, 1928 and 1929) they have averaged over $6,750,000 annually. (Pet. Ex. 113, R. 941.) At the time of the trial Swift & Company had also not complied with the decree in certain substantial respects. It then owned about 60% of the voting stock of Libby, McNeil & Libby, which is engaged in the business of canning meat, vegetables, and fruit, and it had extensive stockholdings in stockyards companies. (R. 643; Pet. Ex. 151.[5])

Since the entry of the consent decree one of the five major defendants, sometimes called the Big Five, has been absorbed by another, thus further concentrating their joint power. In 1925, following a hearing before the Secretary of Agriculture under the Packers and Stockyards Act, the Secre-

[5] This is one of the exhibits which were not included in the printed record, but have been filed with the clerk of this Court, and, by consent of the parties, may be referred to in brief or argument. (R. 1172.) For convenience, these exhibits will hereinafter be designated, "not printed."

tary held that it was not a violation of that Act for Armour & Company to acquire Morris & Company. (R. 961–969.) Of the five original major defendants, now reduced to four, only the Swift and Armour groups have applied for modification or taken part in the present proceedings. The other defendants have stated in open court that, while they are not seeking modification of the decree, they would consent to such modification as the court might order provided it be made applicable to all of the defendants. (R. 1042.)

After an extended trial, in which the interveners actively participated, the court below filed an opinion in which it held, as the Government conceded, that it had power to modify the consent decree. (R. 1039, 1042–1043.) It concluded that since the date of the decree there had been great changes in the methods of distribution of foods and in the situation of those engaged in the packing industry. (R. 1056.) With reference to the prohibitions of the decree involving use of refrigerator cars and the handling of unrelated lines, it said that the sole question was "whether it is inequitable to further continue the provisions of the decree in these respects." (R. 1057.) The court also said (R. 1057):

> the entire change of conditions in the distribution of foods, those brought about by economic changes and practices, those brought about by the changes in the condi-

> tions and practices of the petitioners, and changes in the statutes and laws must be considered, and if by reason of those changes, any provision of the Decree can be modified without danger of monopoly, or the probability of acts in restraint of trade or unfair practices on the part of the petitioners, then the Decree should be modified.

It held that the decree should be modified to permit the defendants to manufacture and deal in unrelated lines, except at retail, and to use and permit others to use their distributive facilities in this connection. (R. 1059.) This appeal is from an order to this effect which the court entered. (R. 1060.)

The United States, the interveners, and appellees each requested the court to make certain specific findings of fact. (R. 1063, 1070, 1082.) The court did not make any of the findings requested by the Government or the interveners, but selected its findings from those requested by appellees. (R. 1063–1068, 1110–1114.) Both the Government and the interveners excepted to the court's findings. (R. 115, 116.)

The following summarizes the findings and conclusions of the court, including those contained in its opinion:

1. The court has jurisdiction to modify the decree. (Op. R. 1042–1043; Concls. of Law, 2–5, R. 1114.)

2. The chief purpose of the original bill was to prevent monopolistic control by the defendants of the supply and price of food supplies of the Nation; no such monopoly now exists and defendants are not engaged in any conspiracy to acquire such a monopoly; and this fact is a ground for modifying the decree. (Op. R. 1043, 1057; Fngs. 1–8, 14, 15, R. 1110–1112; Concl. of Law 1, R. 1114.)

3. Under the Sherman Act, and under the facts in this case, control of interstate commerce is material in determining the power to monopolize; defendants combined control over 70% of the output of all packers engaged in interstate commerce and appellees together control over 54% of that output, but size alone is no offense and there is now no combination or agreement in restraint of trade among the defendants; the instances of unfair practices and fixing of prices by defendants have been sporadic. (Op. R. 1044, 1050–1052; Fng. 3, R. 1110.)

4. None of the defendants is making large profits as compared with other dealers in foods; Swift & Company has paid dividends regularly for 44 years, and from 1920 to 1929 at the rate of 8%, and during the same time has added to its surplus a reserve of over $16,000,000; the percentage of profits of Cudahy Packing Company has exceeded Swift's during the same period; appellees' failure to explain the discrepancy between the Swift and Armour profits on substan-

tially the same amount of business largely weakens any argument based upon defendants' small earnings. (Op. R. 1048–1049.)

5. Swift and Armour each had sales amounting to more than $1,000,000,000 in 1920 and also in 1929. Only one other food company approached this volume, but its business can hardly be said to compete with that of the packers. (Op. R. 1047.)

6. Chain stores, both regular and voluntary, have increased in numbers and volume of business since 1920, but the buying power of the large chains does not seriously threaten defendants' business nor has the development of the former caused any great loss in defendants' profits; the chains do a very small part of the slaughtering business. (Op. R. 1046, 1049, 1050.)

7. There has been a wide increase in combinations among manufacturers of food products and a corresponding increase in horizontal integration among wholesalers of food,[6] but the profits of these companies are not properly comparable with those of the slaughtering packers. (Op. R. 1047–1048.)

8. Market information is now widely disseminated and appellees have now no peculiar advantage in this respect over their competitors or those who deal on the stockyards. (Op. R. 1053–1054.)

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[6] None of these so-called integrated concerns approaches either of appellees in size or volume of business, the total 1929 sales of the largest of them being less than $350,000,000 as compared with a 1929 volume for each of appellees of $1,000,000,000. (R. 718, Pet. Ex. 72, R. 888a.)

9. The passage of the Packers and Stockyards Act is a real change in conditions which necessarily would greatly limit the power of the defendants to acquire a monopoly; but while this Act and the present widespread dissemination of market news has diminished the danger arising from appellees' ownership of stockyards and their facilities, it would be unwise to modify the decree in this respect because there are many opportunities for secret preferences in the operation of stockyards and terminals and much for propaganda and distortion of news in newspapers, and because it is probable that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the decree. (Op. R. 1053, 1056.)

10. The original bill charged that, in addition to their numerous branch houses, defendants gained advantages over their competitors by the use of refrigerator cars which enabled them to distribute commodities other than meats with comparatively little increase in cost; if defendants are permitted to transport unrelated lines in their refrigerator cars, they would either pay less freight for the shipment of meats or be enabled to ship other commodities almost without expense, and the sale of both meats and other products would result in other economies; the use by defendants of excess space in their refrigerator cars and warehouses is sound as an economic and business

proposition and should not be prohibited unless absolutely necessary; the supply of refrigerator cars is ample; the use of automobile trucks for short-distance deliveries of food products has greatly diminished any advantage given the defendants by ownership of refrigerator cars. (Op. R. 1054–1055, 1057–1058; Fngs. 9, 10, 17, R. 1111, 1113.)

11. A great change in the method of distribution of meats is being brought about by the quick-freezing process; this will deprive local packers of the advantage they now have in that their meats are freshly slaughtered; it will enable defendants to avoid dumping their products on the market at unfavorable times and to make use of the increasing public demand for branded articles. (Op. R. 1055.)

12. The consent decree should not be modified to permit defendants to engage in retailing, because this would probably result in the almost complete annihilation of the independent retail grocer; appellees admit that if they entered into the retail business, they could in many ways reduce the cost of their products to their own stores, and there is a real danger of the misuse of the power to retail. (Op. R. 1058.)

13. There is no danger of monopoly on the part of the defendants arising from dealing, other than at retail, in commodities other than meats or from use of their distributive facilities in this connection. (Op. R. 1058.)

SPECIFICATION OF ERRORS TO BE URGED

The Government specifies as errors to be urged all of its assignments of error, numbered 1 to 13, inclusive. (R. 1118–1120.)

SUMMARY OF ARGUMENT

I. The consent decree having been entered without any findings of fact by the court, its purpose must be ascertained primarily from the allegations of the Government's bill. We submit that it sufficiently appears therefrom that the decree enjoined dealing in unrelated lines and use of defendants' distributive facilities in this connection, to guard against danger of monopolistic conditions and restraint of trade resulting from defendants' vast size, their nation-wide marketing organizations, their dominant position in the meat industry, and their ability to handle unrelated lines through their existing distributive facilities with comparatively no additional overhead expense.

II. Appellees may not collaterally question either the necessity for or the wisdom of the relief given the Government by the consent decree. Since the decree enjoined dealing in unrelated lines upon the ground that such dealing constituted a potential threat of illegal monopoly and restraint of trade, this restraint should not be removed unless appellees affirmatively show that the conditions which in 1920 were regarded as creating this danger have fundamentally changed. In support of modification appellees may not rely upon changes brought

about by the decree itself. It is no ground for modification that there is now no combination or agreement in restraint of trade among the defendants or present monopoly of interstate commerce in meats; this condition the decree intended to bring about. It is not surprising that defendants have not obtained a monopoly during the period that the decree has stripped them of the principal instrumentalities for attaining monopolistic control.

III. 1. Defendants' size and the extent of their operations are as impressive to-day as when the decree was entered. They are still the only national packers. In 1929 their combined sales were over $2,500,000,000, those of Swift and Armour were each over $1,000,000,000, while the 1929 sales of their 13 outstanding competitors totaled only $407,000,000. Each of appellees controls a great number of subsidiary companies and has purchased since 1920 numerous large meat-packing and produce companies. Notwithstanding the prohibitions of the decree against handling unrelated lines, appellees handle a very extensive variety of products, including several hundred meat items, butter, cheese, eggs, poultry, oleomargarine and cotton-seed-oil products, and by-products such as hides, fertilizers, glues, serums, soaps, and various greases.

In the meat-packing business defendants control over 70% of the output of all slaughterers whose products move in interstate commerce and appel-

lecs together control over 54% of that business. Defendants' share of the business in 1929 at least equalled their share in 1920.

We submit that the lower court in considering defendants' net profits as compared with those of their competitors, the decrease since 1920 in the dollar volume of defendants' gross sales, and the increased number of competitors, overlooked many important factors. An analysis of the evidence bearing upon these questions shows that they do not point to any change since 1920 in defendants' dominant position in the meat industry or in their relative size and power.

2. The Government's bill alleged that the facilities and organization which defendants had built up for the marketing of meats "were employed with comparatively no increase of overhead in the distribution of" unrelated lines. It was the theory of the decree that the competitive advantages which these facilities gave defendants, coupled with their vast resources and dominant position in the meat industry, empowered them to exercise monopolistic control and to restrain trade in unrelated lines. We contend that it was in order to insure against the "dangerous probability" of exercise of this power that the decree enjoined dealing in unrelated lines and use of defendants' distributive facilities for this purpose.

The same competitive advantages existing at the time of the entry of the decree exist to-day. By using their existing branch houses, appellees can

handle unrelated lines without additional warehousing expense. By loading these lines in their refrigerator route cars, they can transport them in many cases without payment of additional freight. These lines can be transported more expeditiously in their route cars than in the ordinary merchandise cars which other wholesale distributors of groceries use, and greater expedition in movement is a more potent competitive advantage to-day than in 1920. Appellees' employees testified that appellees could handle groceries and canned goods with practically no increase in distributing expense or overhead. The wholesale grocer's margin of profit is so small that, upon modification of the decree, defendants' advantage in lower transportation and warehousing costs would seriously jeopardize his position and increase the power of the defendants to restrain or monopolize trade.

If the decree causes some economic waste by preventing full utilization of defendants' existing facilities, modification of the decree would cause a corresponding economic waste by taking away business from wholesale distributors of groceries, thereby preventing full utilization of the latter's existing facilities.

3. The growth of chain retail stores, both "voluntary" and "regular," since 1920 and the alleged recent tendency toward integration of food manufacturers do not warrant modification of the decree. Only the largest of the regular or centrally owned chains are able to manufacture a material portion of their own supplies. Chain stores gen-

erally purchase their supplies from others. To the extent that defendants can supply most of the chain stores' requirements in meats, dairy and poultry products, and groceries and to the extent that, for the large chains, defendants are the only steady and reliable source of meats in the requisite quantity and quality, defendants may be expected to displace, if the decree is modified, the food distributors from which the chains now buy. The chain stores' dependence upon defendants for meat supplies may be used to push the sale of defendants' other products. The largest existing chain store organization now obtains 90% of its meat supplies from defendants in that section of the country where its meat business has been fully developed. The president of this company recognized the "tremendous embarrassment" that would be caused it by the loss of this source of supply.

The integration movement among food manufacturers has been too insignificant to affect the issues in this case. On the other hand, development of quick freezing is a change of much greater importance and one which tends to show that the decree should not be modified. The probable effect of this development will be to strengthen defendants' hold upon the meat-packing industry.

4. The Packers and Stockyards Act of 1921 subjected all large stockyards to public supervision, thereby strengthening the provisions of the decree intended to prevent unfair practices in the pur-

chase of livestock. But the injunction against dealing in commodities not related to the meat industry and that against use of defendants' distributive facilities for handling these commodities were not entered to prevent unfair practices in the purchase of livestock. The change in the law effected by the Act therefore has no substantial bearing upon the question of modifying these injunctive provisions. That part of the Packers and Stockyards Act which relates to packers does not constitute a material change in the law; it merely transfers to the Secretary of Agriculture jurisdiction over packers in respect of acts and practices already unlawful under the antitrust laws.

The widespread dissemination of market news is very remotely, if at all, related to the question of defendants' dealing in these lines.

5. The alleged good conduct of defendants since 1920 and their alleged lack of present intent to monopolize or restrain trade are not grounds for modifying the decree. The theory of the decree was that a general injunction against monopoly and restraint of trade would not afford adequate relief, but that such general injunctive provisions should be supplemented by certain specific prohibitions. The effectiveness of the decree is not a ground for removing these specific prohibitions. Modification of the decree may not be rested upon such an uncertain ground as speculation concerning the future good conduct of defendants.

Defendants' occasional participation in agreements in restraint of trade, in violation of the decree and during a time when appellees have been endeavoring to have the decree set aside or modified, raises serious doubt as to the wisdom of modifying the decree upon the ground of a change in the practices of defendants. The refusal of the lower court to permit defendants to own stockyards because of opportunities for secret preferences in their operation indicates that it was not convinced that they would refrain from unfair practices in the future. The fact that some of the higher Armour officials have illegally used their control over freight traffic to promote the sale of freight equipment manufactured by companies in which they were personally interested, and the fact that there is evidence of similar activity by Swift officials, at least suggest that defendants may make an unfair use of the power given them by their vast and varied activities to promote, irrespective of intrinsic merit, new business undertakings.

ARGUMENT

I.

THE PROHIBITIONS OF THE CONSENT DECREE WERE INTENDED TO PREVENT ANY DANGER OF MONOPOLISTIC CONTROL OR RESTRAINT OF TRADE BY DEFENDANTS

The 1920 decree having been entered without any findings of fact by the court, its purpose must be determined from the allegations of the Govern-

ment's bill. The bill states that it was filed to put an end to the combinations in restraint of trade described therein and to any and all monopolies which the defendants may have obtained in interstate commerce in livestock, meat products, and substitute foods; and to prevent the continuance of these unlawful combinations and monopolies. (R. 8.)

With reference to substitute foods, the bill alleges that defendants had set about controlling the supply of fish, vegetables (both fresh and canned), fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods; that to accomplish this purpose they employed their refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses "with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities"; that they also employed this advantage "temporarily to fix prices so low as to gradually eliminate competition"; that they had obtained complete control in many of the substitute food lines and had made substantial headway in others; that their control was extensively and rapidly increasing. (R. 17.) The bill alleges that the business of Armour & Company in certain food items had increased from $6,396,000 in 1916 to $39,820,000 in 1918, that the defendants in recent years had acquired a large number of concerns manufacturing or selling substitute foods or unrelated commodities, and that they had, in addition, contracted for

the exclusive output of many other companies engaged in such manufacture. (R. 19.)

The bill prayed for an injunction against use of defendants' distributive facilities in the handling of unrelated lines to the extent that the court might deem necessary for the purpose of preventing defendants "from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal." (R. 22.)

The Government's bill must also be read in the light of the charges made in the preceding report by the Federal Trade Commission on the meat-packing industry. In its letter[7] to the President transmitting its Summary of this report, the Commission said:

> If these five great concerns owned no packing plants and killed no cattle and still retained control of the instruments of transportation, of marketing, and of storage, their position would not be less strong than it is. (65th Cong., 2d Sess., H. R. Doc. 1297, p. 4.)

In its Summary[7] the Commission said:

> With the development of their branch house and car-route systems it is unneces-

[7] The Court may take judicial notice of these documents. *Tempel* v. *United States*, 248 U. S. 121, 130; *Jackson* v. *United States*, 230 U. S. 1, 18. See *Swift & Co.* v. *United States*, 276 U. S. 311, 319, *supra*.

> sary for the packers to go through the slow process of building up manufacturing plants. Their initial move is to contract for the output of factories. After the manufacturers have been under exclusive contract for a few years they become virtually "tied" to the packers, and unable to break away and develop new outlets for production.
>
> Already even the oldest and most strongly established wholesale houses are seeing line after line of their merchandise absorbed by the packers' branch-house system. First, they saw the packers encroach on the handling of butter, eggs, and cheese, then canned goods, then various kinds of "package goods," and now rice, sugar, coffee, and other staples are being increasingly handled by the packers. (*Ibid,* p. 19.)

The Commission pointed out that in 1917 Armour first undertook to handle rice and in that same year became, according to its vice president, "the greatest rice merchant of the world." (*Ibid,* p. 14.)

We do not contend that any presumption of unlawful conduct by the defendants arises from the allegations of the bill or the charges of the Commission, but we refer to them in order to explain the purpose of and reasons for the prohibitions of the decree. We do contend that it sufficiently appears that the decree rests upon the assumption that—in view of the size and power of the defendants, their domination of interstate commerce in

meat products and the competitive advantages given them by their nation-wide distributive facilities and organization—their dealing in unrelated lines and use of their distributive facilities in this connection created a threat of monopolistic conditions and restraint of trade, and that it was to guard against this threat that defendants were barred from such dealing and such use of their distributive facilities.

II

THE PROHIBITIONS OF THE CONSENT DECREE SHOULD NOT BE REMOVED UNLESS THERE HAS OCCURRED SINCE 1920 A FUNDAMENTAL CHANGE IN THE CONDITIONS WHICH AT THAT TIME WERE REGARDED AS CREATING DANGER OF MONOPOLISTIC CONTROL OR RESTRAINT OF TRADE BY DEFENDANTS.

In 1920 appellees agreed to the entry of a decree which prohibited them from dealing in unrelated lines and from using their distributive facilities for the transportation, storage, or sale of these unrelated lines. Appellees, having consented to these prohibitions, can not collaterally question either the necessity for or the wisdom of the relief given the Government. (*Swift & Co.* v. *United States,* 276 U. S. 311, 326–328, 331, *supra.*) It is not open to them to urge that, upon the basis of the facts charged in the Government's bill, the relief granted was inappropriate or unnecessary. Nor does the mere lapse of time give them any greater right to urge this objection.

If, as we contend, it was the purpose of the decree to restrain defendants from engaging in certain activities, upon the ground that these activities constituted a potential threat of illegal monopoly and restraint of trade, the restraints of the decree should not be removed unless appellees affirmatively show that the conditions which in 1920 were regarded as creating this danger have fundamentally changed.. To obtain modification of the decree it is not enough to show that monopoly by defendants of interstate commerce in foods is not attainable to-day. Appellees must show specific changes since 1920 which of themselves are sufficient to make such a monopoly or restraint of such commerce impossible. If such specific changes are not shown, the court may not decide as an original question that the relief given by the 1920 decree was directed against a threat of monopoly and restraint of trade which was illusory or nonexistent. To modify upon such a ground is to attack collaterally the validity of the original decree.

Neither may appellees rely upon changes brought about by the decree itself. Thus, the fact that the decree prevents defendants from owning any interest in stockyards and stockyard facilities is not a ground for removing the bar against dealing in unrelated lines since the decree intended to impose both forms of restraint. The court below, in reaching the conclusion that the decree could be modified without danger of monopoly, apparently gave some

weight to the "other restraints" imposed by the decree. (R. 1058.)

We also contend that the changed conditions relied upon to support modification must be such that their continued existence is independent of the will of the defendants. The lower court stated that one of the factors to be considered upon the question of modification was changes in the "practices" of appellees. (R. 1057.) It noted that by the great weight of the testimony there was now no combination or agreement in restraint of trade among the defendants. (R. 1050.) But this is a condition which the decree intended to bring about; it enjoined engaging in any combination in restraint of trade (R. 154) and using any illegal trade practices (R. 162). The fact that defendants have not generally violated these provisions is not a ground for modifying other provisions of the decree. The Government proved several instances of unfair practices and fixing of prices. (R. 803–806.) The court characterized these as "sporadic" and emphasized the lack of further evidence of this character. (R. 1050–1052.) The purpose of this testimony was to show that certain agreements and acts in restraint of trade had occurred in violation of the decree and notwithstanding appellees' campaign to have the decree set aside or modified and to illustrate the kind of conduct which might become more general if the restraints of the decree should be relaxed.

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Not only do appellees have the burden of showing changes which warrant modifying the decree, but, since they seek to modify a decree to which they "consented with their eyes open," the proof of such changes must be "convincing." *United States* v. *Discher,* 255 Fed. 719, 720 (S. D. N. Y.).

III

SINCE 1920 THERE HAS OCCURRED NO FUNDAMENTAL CHANGE IN THE CONDITIONS WHICH WERE THEN REGARDED AS CREATING DANGER OF MONOPOLISTIC CONTROL OR RESTRAINT OF TRADE BY DEFENDANTS

1. Defendants have Retained their Dominating Size and Power.

To-day, as in 1920, the defendants are the only packers operating on a national scale, and they reach through their marketing facilities every part of the country. (R. 646.) In 1929 their combined sales amounted to $2,616,224,000; those of Swift and Armour were each over $1,000,000,000, while Wilson's sales totaled $308,805,000 and Cudahy's $267,960,000. (Pet. Ex. 72, R. 888a.) On the other hand, the total sales of 13 competitors cited by appellees (including some processing concerns which do not slaughter) amounted in 1929 to only $407,476,000; those of the largest were less than $100,000,000; the next largest slightly over $50,000,000; and the remainder ranged from $10,500,000 to $46,32,000. (Pet. Ex. 71, R. 866a.)

Swift and Armour each controls over 50 subsidiary companies,[8] exclusive of stock holdings of their officers and directors (R. 649). Appellees have both pursued an aggressive expansion policy since 1920 in the lines in which they are permitted to deal. Swift has acquired 12 packing companies since 1920, most of which had annual sales prior to purchase ranging from $1,000,000 to $6,000,000; during the same period Swift purchased 26 produce concerns (dealing chiefly in dairy and poultry products), 7 of which had annual sales of $1,000,000 or over, the sales of the majority of the others ranging from $200,000 to $500,000 annually. (Pet. Ex. 147, not printed.) In the case of Armour, the Morris & Company acquisition is outstanding. Armour also acquired another packing company with annual sales of over $8,000,000; of the remaining 35 Armour acquisitions, the majority were of produce concerns, the total annual sales of which amount to many millions of dollars. (Pet. Ex. 125, not printed.)

Defendants' meat products comprise 25% to 35% of the volume of the average retail foods store. (R. 624, 704, 746, 749, 766.) Appellees are among the leading producers and distributors of such food items as butter, cheese, eggs, poultry, oleomargarine, and cottonseed-oil products (*infra*, p. 37) and

[8] These subsidiaries (other than stockyard companies wholly or partially owned by Swift, R. 642–643) are listed in the Appendix, *infra*, pp. 76–79.

their by-products include hides, fertilizers, glue, serums, soaps, and greases of various kinds.[9]

If not restrained by the decree, not only may defendants use the potential power which arises from their volume of business and diversity of products temporarily to undersell particular food lines in particular localities for the purpose of destroying competition, but they may use their dominant position in interstate commerce in meats to force a full line of their products upon retailers, wholesalers, and chain stores.

The court below properly accepted as the index of defendants' and appellees' control of the meat business their proportion of the total business of slaughterers whose products are shipped in interstate commerce. (R. 1050.) The packers whose slaughtering plants are near points of production of livestock transport the finished product to consuming markets, whereas those packers whose slaughtering plants are near consuming markets must bear the cost of transporting waste portions of animals and of losses resulting from shrinkage in transit, death of livestock, or injury to hides. (R. 29, 441, 449, 537.) The higher operating costs of local packers is graphically reflected in the fact that they sell their meats at from 1¢ to 3¢ a pound above the prices charged by defendants. (R. 430, 433, 441, 442, 448, 453, 660.)

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[9] The diverse products manufactured and sold by Swift, as disclosed by its Year Books (Gov. Ex. 101, not printed), are set forth in the Appendix, *infra*, pp. 79–80.

Using the test, therefore, of the output of all slaughterers whose products are shipped in interstate commerce, the court below said (R. 1050):

> The petitioners, Swift & Company and Armour & Company, together control over 54%[10] of the output of all packers engaged in interstate commerce, and all the defendants combined control over 70%[10] of that business so that, if the four defendant groups should act together under any agreement or combination, they would unquestionably be able to control the greater part of this interstate business and this would be the case even if Swift & Company and Armour & Company alone should combine.

The picture is not very different if comparison is made with the total business of all slaughterers reporting under the Packers and Stockyards Act, including those which do not ship their products in interstate commerce. On this basis, defendants did 65.2%, and appellees 50.46%, of the business in 1929. (Gov. Ex. 19, R. 1036h.) Of the total business of those reporting under the Act, including slaughterers which do not sell in interstate commerce and processors which do not slaughter, defendants did 56.01% of the business in 1929 and appellees 43.33%. (Gov. Ex. 19, R. 1036h.)

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[10] The percentages are based upon Government Exhibit 19, Record 1036h. Government exhibits numbered from 7 to 27, inclusive, are compiled from reports filed with the Department of Agriculture by packers subject to the Packers and Stockyards Act. (R. 411, 725–726.)

The following shows the proportion of the total federally inspected slaughter in 1920 and in 1929 done by Swift, Armour, Swift and Armour combined, and the defendants combined (percentages being based on figures shown in Pet. Exs. 7 and 10, R. 811–812, 816a):

	Swift		Armour		Swift and Armour		Defendants	
	1920	1929	1920	1929	1920	1929	1920	1929
Cattle	23.8	25.8	30.0	27.0	53.8	52.8	71.5	69.4
Calves	31.1	33.4	24.8	24.6	55.9	58.0	66.7	71.4
Sheep, etc	30.1	36.6	29.1	28.8	59.2	65.4	78.0	84.9
Hogs	17.7	19.5	21.2	17.1	38.9	36.6	51.2	47.9

No radical change from 1920 is shown; in fact no definite trend of any kind is indicated. Swift's percentage of the business has slightly increased and Armour's slightly decreased. The Armour percentages for 1920 are based on the combined business of Armour and Morris and some falling off in their separate totals probably resulted from the merger. For the defendants as a whole, the percentage increased under two classifications and decreased under two.

Comparison of the 1920 and the 1929 percentages of total estimated United States slaughter done by Swift, Armour, Swift and Armour combined, and the defendants combined shows that the appellees combined, as well as the defendants combined, had a greater percentage of the total in 1929 in four out of the five classifications. The figures are as follows (Pet. Ex. 10, R. 816a):

	Swift		Armour		Swift and Armour		Defendants	
	1920	1929	1920	1929	1920	1929	1920	1929
Cattle	14.8	17.5	18.6	18.4	33.4	35.9	44.4	47.2
Calves	15.0	18.0	12.0	13.3	27.0	31.3	32.2	38.6
Sheep, etc	23.2	28.4	22.3	22.3	45.5	50.7	59.8	65.8
Hogs	10.9	12.6	13.0	11.1	23.9	23.7	31.4	31.0
Meat and lard	13.2	15.2	15.8	14.1	29.0	29.3	38.2	38.3

The only figures on the production of lard compounds and substitutes and of oleomargarine are for 1916 and 1927. Of the total United States production of these commodities, Swift and Armour (including Morris) produced of the former 34% in 1916 and 35% in 1927 and of the latter they produced 38% in 1916 and 30% in 1927. (R. 725.) From 1920 to 1930 Swift's production of crude cottonseed oil increased from 47,000,000 to 68,000,000 pounds, or 49.0%, and its production of refined cottonseed oil increased from 160,000,000 to 237,000,000 pounds, or 48.1%. (R. 716.) The total United States production of crude and refined cottonseed oil increased from 1920 to 1929 (1930 figures not being available) 38.4% and 48.0%, respectively. (R. 717.)

In 1929 appellees' combined domestic sales of cheese, butter, and poultry were 22.74%, 10.26%, and 8.21% of the total 1929 United States consumption of these foods (percentages being based on Petitioners' Exhibits 114, 138–140, R. 942a, 954–955).

The court below concluded that the net profits of the defendants are small as compared with those

of their competitors. (R. 1048.) The court based this on the percentage of profits to sales and the percentage of profits to net worth of defendants, on the one hand, and of all packers reporting under the Packers and Stockyards Act, on the other hand. Net worth is an unreliable basis for comparison unless it appears that the same methods of accounting have been used in constructing the balance sheets which are compared. The percentage of profits to sales is also not a reliable basis for comparison since a large business may operate upon the principle of large volume, quick turnover, and small margin of profit, when a smaller business receives a higher margin of profit on lesser volume and slower turnover. The Government's original bill alleged that defendants have always asserted a very low rate of profit on sales. (R. 18.) In its answer to this bill Swift alleged that packing companies operate on a small margin of profit. (R. 40–41.) Furthermore, both of the court's tables include processors which do not slaughter but buy slaughtered products and, as the court points out, the processing business is relatively much more profitable than the slaughtering business. (R. 1048.) If the defendants' net profits are compared with the net profits of all slaughterers who sell their products in interstate commerce and if defendants' total business is compared with the total business of all these slaughterers, the defendants' percentage of total profits is shown to have been consistently higher than their percent-

age of the total business. This has also been true for Swift and for Swift and Armour combined. We believe that the following summary of Government Exhibits 21–23 (R. 1038a) demonstrates the error in the court's conclusion that defendant's net profits have been small as compared with those of their competitors:

	Swift		Armour		Defendants	
	Per cent of business	Per cent of profits	Per cent of business	Per cent of profits	Per cent of business	Per cent of profits
1924	25.14	21.91	29.51	28.40	69.42	63.27
1925	23.20	34.49	26.53	32.41	63.27	75.97
1926	28.10	38.29	25.09	19.94	66.22	75.91
1927	26.73	84.01	29.02	3.41	70.99	[1] 103.27
1928	26.73	33.12	28.25	25.33	70.87	69.13
1929	27.47	36.33	28.21	27.25	71.89	77.63
Average	26.23	41.36	27.77	22.79	68.78	77.53

[1] Apart from defendants, there was a combined net loss for this year. (R. 732.) About 70% of the losses were sustained by about six concerns. (R. 733.)

The court below failed to note that both of the tests which it applied show that defendants are operating now on a very much more profitable basis than when the decree was entered. Their combined earnings were 0.18% of their total sales in 1920; in 1929 they were 1.06%, and for the years 1923 to 1929, inclusive, they averaged 1.30%. (Pet. Ex. 72, R. 888a.) Their combined earnings were 0.88% of their net worth in 1920; in 1929 they were 4.55%, and for the years 1923 to 1929, inclusive, they averaged 5.02%. (*Ibid.*) For the years 1917 to 1922, inclusive, Swift's profits averaged 6.81% on investment and 1.37% on sales. (Swift's 1923

Year Book, pp. 43–44, Gov. Ex. 101, not printed.) For the years 1923 to 1929, inclusive, its profits averaged 6.42% on investment and 1.57% on sales. (Pet. Ex. 72, R. 888a.)

The court below said that there were "some rather singular facts as to the profits of Swift and Armour, which are not explained," that the failure to account for Swift's higher profits upon substantially the same volume of business "largely weakens the argument of the petitioners based upon their small returns in business," and that "there has been a failure to make a full disclosure of the facts in this respect." (R. 1049.) Both the president of Armour and the vice president of Swift refused to offer any explanation for the difference between the earnings of the two companies. (R. 633, 649.) In addition, appellees submitted no figures segregating profits on domestic business from profits on foreign business or showing separately the earnings of the different branches of their business. The record indicates that, at least in the case of Armour, unfavorable results in foreign business, and in fertilizers and hides and leathers, substantially affected earnings in several years. Armour's annual report for 1926 states that the company's domestic operations "were conducted on a satisfactory basis" and that it was the results of its business in the South American field which caused the company to omit dividends on Class A common stock. (Pet. Ex. 126, not

printed.) Armour's annual report for 1925 gave as one of the two reasons for lower net earnings than in 1924 "the unfavorable conditions surrounding our South American business," referred to "great losses" which had "often resulted" in its fertilizer business in the past, and said that the leather business ever since the war had "suffered under the burden of excessive inventories and supplies." (Pet. Ex. 126, not printed.)

The court below, instead of considering the figures bearing upon defendants' relative percentage of the meat-packing business in 1920 and 1929, emphasized that defendants' sales in 1929 were less than in 1920. (R. 1045.) But a mere comparison of the dollar value of sales in these two years is without significance. Aside from the fact that sales in 1929 would be materially reduced by the abandonment of unrelated lines, which abandonment, while incomplete, was yet substantial; aside from the very great effect upon dollar volume of a change in the price level over a ten-year period; aside from the many diverse additional factors which might affect the volume of business of corporations having combined sales of over $2,500,000,000, such as changes in foreign business and the partial loss of business to competitiors probably resulting from the acquisition of Morris & Company by Armour; examination of defendants' sales year by year over the period 1920 to 1929, inclusive, presents an entirely different picture. From 1920 to

1922 their combined sales decreased from $2,971,-121,000 to $1,905,561,000, a decrease of 35.9%. (Pet. Ex. 72, R. 888a.) During the following seven-year period their sales increased each year except in 1924, when the decrease was less than three-tenths of one per cent and in 1926, when the figures for two of the four companies cover only ten months. (*Ibid.*) The gradual increase in defendants' sales from 1922 to 1929 amounted altogether to $710,663,000, or 37.3%. (*Ibid.*)

The court below also said that the large percentage increase in the business of certain other packers "attest the nature and extent of the competition in this business." (R. 1045.) The greatest percentage increases mentioned by the court are from $7,000,000 to $46,000,000, or 550%, and from $3,-750,000 to $22,000,000, or 486%. But mere percentage increases based upon initial small sales do not attest the nature and extent of competition when the total business of these competitiors, following the increase, is in one case less than 1%, and in the other less than 2%, of defendants' 1929 business. Furthermore, stimulation of competition was one of the effects contemplated by the decree.

The court below likewise referred to the increase from 1925 to 1929 in the number of packers reporting under the Packers and Stockyards Act. (R. 1045.) The figures which it cites are taken from Government Exhibit 7. (R. 1036a–e.) Beginning with 1926, the concerns shown in this exhibit are classified into "federally inspected slaughterers,"

"nonfederally inspected slaughterers," and "miscellaneous, including nonslaughterers." During this period the total concerns reporting increased by 252, while the total federally inspected slaughterers increased by only 17. Therefore all but 7% of the increase represents either slaughterers which do not sell their products in interstate commerce or processors which do not slaughter. Furthermore, the Assistant Chief of the Packers and Stockyards Division of the Department of Agriculture, who supervised the preparation of this exhibit, testified that the number of reporting packers had increased since 1924 due to the Department's greater effort to ascertain what packers were required to report under the Act. (R. 725–726, 731.) He stated that he did not know to what extent the increase in reporting concerns represented established firms which had not previously reported rather than new packers actually coming into the field. (R. 731.)

The figures in Petitioners' Exhibit 4 (R. 810) showing the number of slaughtering and meat-packing establishments in 1921 and 1927, classified according to the value of their products, have no evidentiary value because they represent, not separately owned concerns, but merely separate plants (R. 389).

2. There has been no Change since 1920 in the Opportunity for Monopolistic Control and Restraint of Trade Afforded by Defendants' Use of Their Distributive Facilities in Handling Unrelated Lines.

The original bill alleged that the use by defendants of the facilities and organization built up for the marketing of meats gave them a competitive advantage in the distribution and sale of unrelated lines which, coupled with their vast resources and dominant position in the sale of meats, empowered them to exercise monopolistic control or restraint of trade. (*Supra*, pp. 5–6.) To prevent the exercise of such power the defendants were enjoined from dealing in unrelated lines. We contend that the same competitive advantages existing at the time of the entry of the decree, and upon which the restrictions against dealing in unrelated lines rest, exist to-day, perhaps to an even greater degree than in 1920. We therefore contend that in this respect no change in conditions has occurred which warrant modification of the decree.

The principal facilities used in the sale of meats, which the bill alleged "were employed with comparatively no increase of overhead in the distribution of" unrelated lines, were branch houses (together with their sales organization) and route cars. (R. 12–13, 17.) Branch houses are equipped with facilities for cooling and preserving meats, and each is under the charge of a branch-house manager, under whose direction a branch-house sales organization sells to retail and wholesale butchers, to purveyors, hotels, and other large consumers. (R. 13.) Route cars are refrigerator cars which are hauled in local freight trains and which start from a packing plant or branch house

and are routed to reach specified towns on specified dates to fill orders taken in advance by salesmen. (R. 13.)

In their answers to the Government's bill, appellees admitted their ability to handle unrelated lines without a proportionate increase in expense, but alleged that the resulting economies were in the interest of the consumer. (R. 43, 69.) Armour's answer alleged that the defendants were able to reduce the cost of marketing unrelated lines "through complete and efficient operation and use of their facilities and branch-house space, thereby rendering better and more efficient service." (R. 70–71.) This is the same contention now made in support of modification of the decree.

Defendants claim they can take on unrelated lines without substantially increasing their present branch-house facilities. (R. 528, 647, 678.) There would be other economies. The general superintendent of Armour branch houses testified (R. 657):

> We could handle nonmeat products along with meat products through our branches, with our existing facilities, and distribute our selling costs over a wider line without increasing our fixed charges at all, nor, we believe, our delivery charges either to any extent.

A district manager of this company said (R. 678):

> If we could handle other lines through our branch houses and trucks, it would help us

> utilize this idle space, reduce our overhead, and operate our trucks at full capacity, and would not require any additional expense in these branches, either for salesmen, rents, office force, or management.

The assistant manager of Swift's branch-house department testified (R. 528):

> Swift branch houses have not been used for handling groceries or canned goods. We did this to quite an extent in 1916 and 1917 and could do so now without any increase in our sales organization and with practically no increase in our distributing expense or overhead.

In the court below appellees contended that they are burdened by excess branch-house capacity. To the extent that their surplus space is due to the injunction against dealing in unrelated lines, appellees can not complain without showing that this result was not contemplated by the parties to the consent decree. They have made no such showing.

We also submit that appellees have not shown any greater change in the matter of unnecessary branch-house capacity than can be attributed to the ordinary fluctuations of trade and business. In 1920 Swift had 371 branch houses and in 1930 it had 440. (R. 525, Pet. Ex. 143, R. 956.) In 1920 Armour had 398 and Morris 167 branch houses; in 1930 Armour had 391 branch houses, but after Armour acquired Morris & Company many of the branch houses of the two companies were closed to

avoid duplication of facilities. (R. 613–614, Pet. Ex. 153, R. 959.) That there has been no falling off in the proportion of the business handled by branch houses is shown by appellees' own figures. For Armour and Morris combined, the branch-house sales in 1920 ($681,792,000) were about 74% of their domestic sales of edible products ($925,-560,000), while in 1929 their branch-house sales ($571,792,000) were about 79% of their domestic sales of edible products ($723,808,000). (Pet. Exs. 107, 120, R. 938, 943.) There are no figures on the dollar value of sales of edible products by Swift prior to 1929, but from 1920 to 1929 Swift's total sales decreased about 1.6%, but its branch-house sales increased about 7.5%. (Pet. Exs. 72, 144, R. 888a, 957.)

Appellees' contention that with the growth of chain stores a large quantity of business formerly done through branch houses is now done through carload deliveries direct from packing plants to chain stores is not sustained by the evidence. Swift's total sales of edibles in 1929 (1930 figures not available) amounted to $816,250,000, of which $599,726,000 was done through branch houses. (Pet. Ex. 137, R. 954.) For the year ending September 30, 1930, Swift's total sales to chain stores amounted to $71,550,000, of which less than half was delivered in carload quantities. (R. 641–642.) It thus appears that only about 4% of the business of Swift's branch houses has been converted into

carload sales to chain stores direct from packing plants.

While appellees contend that the excess space in their branch houses is burdensome, Swift's 1927 Year Book (p. 33) refers to a study made in 1925 by the National Distribution Conference of the cost of distribution in 17 wholesale trades, which found that the cost of packer branch-house operation was the lowest of the 17 trades investigated. (Gov. Ex. 101, not printed.)

The Government's bill, upon which the consent decree was entered, alleged that defendants' route cars (also called peddler cars) gave them a competitive advantage in that they could distribute unrelated lines with comparatively little increase in overhead. (R. 17.) This advantage is no less today. The use of these cars permits both a saving in transportation charges and quicker deliveries.

There is a minimum tariff for the movement of refrigerator cars based upon a minimum loading. (R. 1054.) Many of appellees' route cars now move loaded below the minimum. (R. 668, 673.) Since route cars must operate regularly and according to schedule because "the trade in each town knows when to expect the car and depends upon it" (R. 612), cars often must proceed although the orders taken for shipment are less than the minimum loading. If groceries could also be carried to make up the minimum, they could be carried, under the tariffs generally applicable, without payment of additional freight. (R. 671, 673, 674.)

The transportation costs of the wholesale grocer, on the other hand, are substantial. (R. 775, 779, 782.) His margin of profit is so small that any advantage enjoyed by defendants in distribution costs would seriously jeopardize his position. (R. 744, 775, 779.) One wholesale grocer testified that he could not compete with Armour and Morris in the sale of canned milk because they ship the milk in refrigerator cars which are underloaded and "the meat carries the load," so that they can undersell him by the amount of his transportation charge. (R. 787.)

In *Swift & Company* v. *United States,* 196 U. S. 375, *supra,* this Court said (p. 402):

> It is obvious that no more powerful instrument of monopoly could be used than an advantage in the cost of transportation.

The exact quantity of unused route car capacity is not shown, but it is clear that it is substantial because appellees rely upon it to show one of the important advantages which will accrue to them from the handling of unrelated lines. This advantage is not destroyed by the fact, to which the court below refers, that the "automobile truck has become the chief method of delivery of food products up to distances of from seventy-five miles to as much as one hundred and fifty miles in some instances." (R. 1055.) For corresponding distances transportation charges by truck and by less than carload freight are approximately the same. (R. 789–790.) In addition, transportation by auto truck is advan-

tageous only for distances up to about 125 miles, while route cars often travel as much as 600 miles. (R. 666.) When the transportation advantage is added to the warehousing advantage resulting from the use of branch houses, the possibility that the wholesale grocer could survive competition with defendants is remote. Vegetable canners also testified that a substantial quantity of their shipments are made in less-than-carload quantities, and any transportation advantage enjoyed by the packers would seriously threaten their ability to compete. (R. 790, 792, 793.)

If defendants are permitted to handle unrelated lines they will have a further advantage over competitors in making quicker deliveries through their route cars. The movement of these cars is expedited because they carry perishables. (R. 441, 470.) The Interstate Commerce Commission has found that shipments in refrigerator cars are handled more expeditiously than those in the ordinary merchandise car. *National Wholesale Grocers Association* v. *Director General,* 62 I. C. C. 375, 387; *In the Matter of Private Cars,* 50 I. C. C. 652, 687. Groceries carried in route cars would obtain the benefit of this expeditious movement.

Expeditious movement is a more serious competitive advantage to-day than in 1920 because the great expansion in recent years of "hand to mouth" buying of food products has increased the importance to the retailer of quick and prompt deliveries. (R. 447, 518.) Swift owns 5,509 re-

frigerator cars and Armour 6,766 and Swift leases additional cars. (R. 639, Pet. Exs. 121, 143, R. 944, 956.) Use of these cars would enable appellees to offer to retailers a delivery service for nonperishables equal to that now given in the case of perishables only, service which their competitors, who do not use refrigerator cars, could not furnish.

Further economies will accrue to defendants, if permitted to handle unrelated lines, from their ability to carry groceries in the same trucks which now deliver principally meats and because the same salesman who sells meats can at the same time also take orders for groceries. (R. 223, 308, 605, 623.) One of appellees' witnesses, speaking of defendants, said (R. 470):

> They have the advantage of distribution facilities superior to those of any other organization in the country, covering the country in a network with about 1,000 branch houses between Armour and Swift together, and a complete merchandising organization ready to add additional items with almost no additional cost, at least relatively small additional cost.

Appellees may contend that, if they deal in unrelated lines, a portion of the transportation and wholesaling costs which are now charged to their present products alone will be allocated to these unrelated lines, so that it can not be assumed that, as compared with their competitors in these lines, appellees will have the advantage of practically no

costs of distribution. But in that case the lowering of the cost of handling meat products will increase their competitive advantage in this field and add to the threat of monopolistic control and restraint of trade against which the consent decree was directed.

It is also immaterial that the supply of refrigerator cars is ample. (R. 1055.). Large grocery distributors do not handle fresh meats and therefore have no use for refrigerator cars. And there is no showing that in 1920 those who desired refrigerator cars were unable to obtain them.

3. Defendants' Power to Attempt to Monopolize or Restrain Trade in Unrelated Lines is not substantially affected by Changes since 1920 in the Methods of Distribution of Foods.

Appellees contend that there have been substantial changes since 1920 in the methods of distribution of foods. They instance the growth of chain stores and an alleged integration movement among manufacturers of foods, and they cite the imminent use of quick-frozen foods.

The recent development of chain stores undoubtedly represents a changed condition, but its effect upon the power of defendants to attempt to monopolize or restrain trade in unrelated lines is not substantial. Chain stores are classed as "regular" or "integral," i. e., centrally owned chains, and "voluntary" chains composed of independently owned stores. (R. 1045.) There are about 551

voluntary chains which do about 25% of the total retail grocery business. (R. 510, 519.) The primary object of the voluntary chain is to emulate the regular chain. (R. 509.) The leading type of voluntary chain is that sponsored by one or more wholesalers who supply merchandising and managerial assistance and sell to retailer members at reduced prices in return for the agreement of the latter to purchase a stipulated proportion of their grocery items from the wholesalers. (R. 508–518, 761–770, 1045–1046.) Voluntary chains have done much to improve store management and to increase cooperative advertising and joint buying, principally of dry groceries. But voluntary chains are not to be regarded as composite units. One of the greatest difficulties in the voluntary chain movement has been that of securing the necessary cooperation of the members; for that reason the buying power of voluntary chains has not been as effective as that of regular chains. (R. 767.)

There is no evidence that voluntary chains do any of their own manufacturing. Voluntary chains will continue to purchase from their present wholesaler associations or from the manufacturers with whom they now deal only so long as it is to their advantage to do so. They are all potential customers of the defendants if the latter can offer them better terms than those now obtained. (R. 758.) With the consent decree modified to permit dealing at wholesale in unrelated commodities, defendants

will be in a position to supplant the wholesale grocer as the principal source of supply for voluntary chains. One inducement which defendants could then offer would be their ability to supply retailers with practically all their needs in both meat and grocery lines at the low prices which would result from defendants' competitive advantage in handling both lines. (*Supra,* pp. 45–51.) Defendants could also offer reductions in meat prices to induce the purchase of groceries, or *vice versa.* It follows that voluntary chains are not a factor which may be expected to supply any restraint upon the power of defendants to control or restrain trade in unrelated lines. It may rather be expected that voluntary chains would, to a substantial degree, come under the domination and control of defendants.

The situation with reference to regular chains is not far different. There were in 1929, 60,000 regular chain stores as against 300,000 independent retail food stores. (R. 519, 567.) Regular chain stores control only 35% of the total retail food business. (R. 519.) Even if regular chain stores manufactured their own supplies, defendants, if permitted to deal in unrelated lines, would still be in a position to acquire control of any of the commodities used by independent and voluntary chain stores doing together 65% of the total retail business.

Large regular chains do a small amount of manufacturing. (R. 491, 495, 497, 564–566, 740.) Only

the largest chains could conceivably attempt to manufacture any substantial proportion of their own needs. Chains operating 1,000 stores or over, nine in number, own 60% of the total regular chain-owned retail stores. (R. 567.) Assuming uniform volume per store, these nine large chains do only 21% (60/100×35/100) of the total retail food business. Smaller chains whose volume of business would not warrant the manufacture of their own supplies, are like the voluntary chains, potential customers of defendants. To the extent that defendants can supply most of the retail stores' requirements in both meat and grocery lines and dairy products, and to the extent that defendants will be able to reduce prices below those of their competitors, defendants will be in a position to control substantial proportions of the business of a large number of chain stores.

The court below found that chain stores "are largely dependent upon" appellees for their meat supplies. (R. 1049.) This is particularly true for large chain-store organizations. For these organizations, defendants are the only steady and reliable source of meats in the requisite quantity and quality. (R. 498, 743–745, 748, 750.) The Great Atlantic and Pacific Tea Company in its eastern division, where its meat business is fully developed, purchases 90% of its meat supplies from defendants. (R. 744.) The president of this company said (R. 744):

> I really think it would cause our company tremendous embarrassment—I do not know what we would do—if we lost those channels.

Defendants' great size and vast distribution facilities can be used to attain a position in unrelated lines approaching that which they now enjoy in the meat-packing industry. The lower court, in refusing to permit defendants to retail, said (R. 1058):

> The control by the defendants of the great amount of interstate commerce in meats and other articles from the producer to the consumer would probably result in the almost complete annihilation of the independent retail grocer, already a minority in volume of business.

The same power which, if defendants were permitted to engage in retailing, "would probably result" in the annihilation of the independent retail grocer (and probably also many chains) will give defendants the power to control at least substantial proportions of the supplies which those stores require.

The extent of the integration movement among food manufacturers has not been great enough to affect the issues in this case. Examples of the "integrated" companies which appellees cite are National Dairy Products Company, General Foods Corporation, Standard Brands, Inc., all amalgamations of previously existing smaller companies. None of the companies of this character cited by

appellees does a total annual business, even approaching in amount that of either of appellees, and all together do not enjoy a position in the foods business generally that defendants enjoy in the meat-packing industry. The total annual business of none of them is over $350,000,000 (roughly 35% of the total sales of each of appellees) and most of them sell less than $100,000,000 annually. (R. 718.) They manufacture principally specialties, particular branded articles that have acquired a national reputation through advertising, but which, altogether, form an insignificant portion of the variety of commodities sold in foods stores and of the commodities in which defendants are forbidden to deal by the consent decree. (R. 499, 500, 502, 551, 719.)

Appellees complain of their inability under the decree to reduce costs, like other manufacturers of foods, by integrating and diversifying their products. In so far as they are thus limited, they consented to the limitation. Moreover, the diversity of the commodities which they now handle—several hundred edible meat products, inedible by-products, dairy and poultry products—is greater than that of any of the integrated food companies to which they refer. (*Supra*, pp. 33–34, R. 616, 719.) Furthermore, as the president of Armour testified, "Diversification of product is important only as it goes to the volume of business, as it carries the overhead." (R. 615–616.) Not only does appellees' volume of business far exceed that of any inte-

grated food company, but their products comprise a greater proportion of the requirements of the average retail store than do the products of their nearest foods company competitor. (R. 704, 746.)

Appellees have contended that the growth of integrated foods companies indicates a trend which is bound to continue and increase. With the collapse of the investment market, further amalgamations among manufacturers of foods is not likely, at least in the immediate future. (R. 700–701.)

Another change in methods of distribution urged by appellees is that which is expected to follow the development of the quick-freezing process. By this process meats are frozen at temperatures of from 29° to 50° below zero, making it possible to keep them as long as a year without impairing their texture, flavor, or quality. (R. 461, 772, 1055.) The testimony was unanimous that in the near future meats will generally be sold in a quick-frozen state. (R. 755, 770–771.) Quick-frozen fish is already being sold extensively in competition with fresh fish. (R. 464, 503, 506.)

The court below seemed to regard the imminent use of quick freezing as one of the changes in conditions warranting modification of the decree. (R. 1055.) But the probable effect of the development of that process will be to strengthen defendants' hold upon the meat-packing industry. The court pointed out that the advantage local slaugh-

terers now have in that their meats are freshly slaughtered will disappear. Without this advantage, which enables them to charge higher prices for their products than defendants charge (*supra*, p. 34), it is doubtful whether the local slaughterers can survive. Secondly, the ability of defendants to package and brand their quick-frozen meats will, as the court below said, enable packers to profit by the increasing tendency of the consuming public to rely upon brand designations to insure obtaining the quality once tested and found satisfactory. (R. 470–471, 1055.) The defendants, who sell and advertise nationally, are in a better position than other packers to profit by the sale of packaged and branded meats. Finally, as the court below said, with the development of quick freezing the necessity for immediate disposal of slaughtered goods will disappear. (R. 1055.) Appellees have urged that monopoly in the meat-packing industry is impossible on account of the perishability of the products handled, requiring their sale immediately at whatever price they will bring. (R. 628, 683.) Depletion of profits due to great losses allegedly incurred from compulsory dumping of slaughtered products at a time when there is no demand therefore will also be eliminated when meats are quick frozen. (R. 1055.) Another important effect, which the court failed to note, is that the alleged ease with which anybody can enter the slaughtering business (R. 467) will

disappear as large investments in quick freezing apparatus become necessary.

With the development of quick freezing, patents for the first time will play an important rôle in the meat-packing industry. The best known process is the Birdseye owned by General Foods Corporation, for which that company paid $22,000,000. (R. 1055–1056.) It uses a double contact machine freezing the meat from both sides, accomplishing the freezing operation in one-fourth the time required by a single-contact apparatus. (R. 462.) General Foods Corporation's patents also include a refrigerator display case, a so-called plate freezer of the type that will be used in retail stores to keep and display quick-frozen products. (R. 466.) Swift and Armour are experimenting on apparatus of their own, the character of which is as yet undisclosed. (R. 630, 648.)

4. Public Control of Stockyards and Development of Market Information since 1920 do not Warrant Modification of the Prohibitions of the Decree against Dealing in Unrelated Lines.

The court below said (R. 1052–1053):

> * * * stockyards are now under the control of the Department of Agriculture by virtue of the Packers and Stockyards Act of 1921. This act forbids unjust, unreasonable or discriminatory charges, regulations, or practices. It requires all changes in

charges to be made public, and they are made subject to the approval of the Secretary, who may himself fix the rates or charges, and who is empowered upon investigation and hearing to make awards of damages to the parties injured. This, of course, is a real change in conditions and one which necessarily would greatly limit the power of the defendants to acquire a monopoly.

The provisions of the Packers and Stockyards Act bringing under public control the large stockyards of the country have little bearing upon the question whether defendants should be permitted to manufacture and sell commodities unrelated to meat products. Even if it be assumed that this statute has made it impossible to maintain serious abusive practices in the purchase of livestock, the relationship between elimination of these practices and the prohibition of the decree against dealing in unrelated lines is, at most, extremely indirect. The decree itself contemplated bringing to an end unfair practices in the purchase of livestock and at the same time the manufacture and sale by defendants of unrelated lines. To accomplish the first end, ownership of stockyards and stockyard facilities was forbidden. The decree enjoined dealing in unrelated lines in order to take from defendants the power to monopolize or restrain trade in these lines, a power given them, it

was alleged, by their vast organization and financial strength, their dominant position in the meat business, and the competitive advantages resulting from their far-flung distribution and marketing facilities. These conditions are not materially affected by the elimination of abuses in the purchase of livestock.

We submit that there is inconsistency in the determination by the court below that the enactment of the Packers and Stockyards Act is not a sufficient change in conditions to warrant removing the prohibitions of the decree against ownership of stockyards and stockyard railroads, but that this enactment is "a real change in conditions" bearing upon a "danger of a monopoly on the part of the defendants arising * * * and from dealing in commodities other than meats." (R. 1053, 1058.)

Apart from the provisions of the Packers and Stockyards Act which relate to stockyards, the Act does little more than confer upon the Secretary of Agriculture jurisdiction over packers in respect of acts and practices which in 1920 were illegal under the Sherman Act, the Clayton Act, or the Federal Trade Commission Act, and to transfer to the Secretary of Agriculture, in the case of packers, the jurisdiction conferred upon the Federal Trade Commission by Section 6 of the Federal Trade Commission Act to require the filing of reports of their business. These provisions of the Act, therefore, if relevant

to the question of dealing in unrelated lines, do not constitute a material change in the law since 1920. Furthermore, the Act does not apply to unrelated lines. The Act confers no jurisdiction, and the Secretary has never attempted to exercise any jurisdiction, over packer use of refrigerator cars or over business done by packers in unrelated lines. (R. 414.)

At present there is wide-spread dissemination of news relating to prices and supply of livestock and prices of fresh meats. This market information, which does not cover unrelated lines, is very remotely, if at all, related to the question of whether defendants should be permitted to deal in these lines. While the dissemination of this news may make it more difficult for the defendants to engage in unfair practices in the purchase of livestock and to manipulate the price of livestock products, it was not because of these practices that dealing in unrelated lines was enjoined. There is again inconsistency, we submit, in the holding by the court that the change in conditions as to market information does not justify removing the injunction against ownership of stockyards, but that this change is one of the factors warranting a removal of the prohibition against dealing in unrelated lines. (R. 1056, 1058.)

5. The Alleged Good Conduct of Defendants since 1920 and their Alleged Lack of Present Intent to Monopolize or Restrain Trade are not Grounds for Modifying the Decree; moreover, no convincing

Inference of Defendants' Future Good Conduct can be drawn from the Evidence.

When the Government's bill was filed in 1920 and when the consent decree was entered the defendants were subject to an injunction which prohibited them from violating the Sherman Act by combining or conspiring together "to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States." *Swift & Company* v. *United States,* 196 U. S. 375, 393, *supra.* The theory of the consent decree, which can not now be collaterally attacked (*Swift & Company* v. *United States,* 276 U. S. 311, *supra*), was that a mere general injunction against monopoly and restraint of trade would not afford adequate relief, but that the defendants should be stripped of the power to monopolize or restrain trade. To that end they were required to divest themselves of the instrumentalities which, it was alleged, were used in effecting their unlawful agreements and restraints. To that end, also, they were prohibited from dealing in unrelated lines and using their route cars and branch houses in handling these lines. The decree also enjoined them from monopolizing, attempting to monopolize, or combining to monopolize interstate commerce and from engaging in agreements in retraint of trade. (R. 154, 162.)

It is not a ground for modification that the decree has been successful, and that, as stipulated in this case, "the individuals, firms, and corporations en-

gaged in the meat packing business in the United States, * * * are in active competition with each other in the purchase of livestock and in the sales of their products." (R. 558.) If no monopoly in the meat business exists to-day and if unlawful practices have been discontinued, the presumption is that this is due to the restraints imposed by the decree.

We submit that the effectiveness of the decree can not be urged as a ground for gradually whittling it away. We also submit that modification of the decree can not rest upon such an uncertain ground as speculation concerning the future good conduct of the defendants. The situation here is unlike that presented in *United States* v. *United States Steel Corp.*, 251 U. S. 417, 445, where the monopolistic practices were abandoned before suit was brought, not in contemplation of suit, but from "a conviction of their futility." The burden there was upon the Government to show the "dangerous probability" of their resumption; to place such a burden upon the Government in this case would be to treat this as an original suit.

The court below said that "the burden is clearly upon the defendants to show clearly that there have been such changes in conditions as to warrant a modification." (R. 1052.) But the weight which the court below gave (R. 1051–1052) to the failure of the Government to prove any existing monopoly or more than sporadic instances of unfair practices

amounts to requiring the Government to establish a case of contempt in order to prevent modification of the decree. And the court failed to note that during a time that appellees have been endeavoring to have the decree set aside or modified (*supra*, pp. 10–11) they might be expected to keep within the decree, a circumstance which largely destroys any inference which might otherwise be drawn from their good conduct. On the other hand, that unfair practices have occurred notwithstanding the decree indicates the danger of removing the restraints imposed by the decree.

There was evidence that on several occasions representatives of defendants had entered into agreements in restraint of trade,[11] notwithstanding the fact that officials in the main offices of the defendants had forbidden any price-fixing agreements. (R. 806.) Defendants' representatives made "threats of cutting prices" to a competitor in Texas. (R. 805.) "Wilson, Armour, and Swift were working under an agreement in Oklahoma as to minimum prices to be obtained on fresh pork." (R. 805.) In certain territories salesmen of the same defendants, together with other packers, "received weekly confidential lists of identical minimum prices." (R. 805.) That the prices ac-

[11] The parties agreed to a summarized statement of the testimony (substantially in the language of the court's opinion) dealing with unfair practices and the record does not contain the testimony theron of the individual witnesses. (R. 803–806.)

tually charged did not coincide is not important, since the prices agreed upon were minimum prices. Armour induced the Vernon Meat Company of Vernon, Texas, to join with them and others "for the observance of minimum prices to their retail customers, the prices being furnished unsigned in a plain envelope, marked 'strictly private'." (R. 805–806.) For a short time Swift's head buyer in New York entered into an agreement with a competitor allocating customers. (R. 805.) There was no evidence that officials in the main offices of defendants knew of these practices. (R. 806.)

The lower court, in holding that it would be unwise to modify the decree to permit defendants to own stockyards and stockyard terminal railroads, did not seem to be convinced that defendants would not again engage in unfair practices. It said (R. 1056):

> There are many opportunities for secret preferences in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers.

In 1929 Armour and Swift endeavored to put into effect a new method of paying sellers of milk for butterfat, and in order to force this upon their competitors, advanced the price of butterfat while the price of butter was not affected. (R. 806.) The fact that they failed in their attempt would not seem to be as important as the fact that they

were willing to attempt to force their plan upon the industry. The president of Armour plainly intimated that the power to retail, if granted by the court, might be used as a club with which to bring to terms an important customer. Referring to the possibility of a dispute with a large customer engaged in retailing and notice from the customer's buyer that he "would not buy any more products from this great house of Armour & Company," he said (R. 635–636):

> I could not conceive of that ever happening if that big buyer thought that there was an opportunity, because he or his people refused us his business, for us to go into the retail business. I can not conceive that he would reach that conclusion. I think he would find a way to do business with us.

That appellees, if permitted to manufacture and sell unrelated lines, may make an oppressive use of their control of one line of business to promote another is at least suggested by the use made by officials of appellees of the great amount of freight traffic which they control, to promote the sale of railroad equipment manufactured by companies in which these and other officials are interested. The Mechanical Manufacturing Company and the Waugh Equipment Company, manufacturers of railroad equipment, are not subsidiaries of either of appellees; but the President of Armour and his family and the President and three vice Presidents

of Swift are interested in the Waugh Company. (R. 637, 645, 649.) Members of the Swift family also owned stock in the Mechanical Company until it was dissolved several months before the trial below. (R. 649.)

At the time of the trial two proceedings were pending before the Federal Trade Commission, one involving use by Swift officials of Swift freight traffic to induce sales to railroads of equipment manufactured by the Mechanical Company, the other involving the use by Armour officials of Armour freight traffic to promote sales of Waugh equipment. (R. 801–802.) Since the trial the Federal Trade Commission has filed its findings and a cease and desist order in the Waugh case. *In the Matter of Waugh Equipment Co.*, 15 F. T. C. Decs. 232. The Commission found that 5,000 out of 7,000 shares of common stock issued when the company was reorganized in 1924 were issued as promotion stock without money consideration, and that 1,666 of these shares were given to high officials of Armour in consideration for their agreement or understanding to promote the sale of railroad equipment manufactured by the Waugh Company through their control over Armour traffic. This agreement was known to the president of Armour, but not to other officers or stockholders. Subsequently these officials increased their stock holdings and the president of Armour, through an investment trust created and controlled by him, purchased 1,000 shares of the company's common

stock. The Commission found that the Armour officials induced and compelled railroads to purchase the company's equipment in preference to competitive equipment of equal or higher quality, making use of assurances of freight traffic and threats of withdrawal, and the actual withdrawal, of traffic. The principal article manufactured by the company is draft gears. The Commission found that of total sales of draft gears for new freight equipment the Waugh Company's share was less than 1% in 1924, was 25% in 1929, and 35% in 1930.

The Commission also found that on or about December 1, 1929, the Waugh Company issued 1,666 additional shares of common stock to the trustee for the estate of G. F. Swift, a large stockholder of Swift & Company, in exchange for a license to manufacture under a device owned by the Mechanical Manufacturing Company, and that since that date the Armour and Swift interests have owned 5,415 shares out of 8,666 shares of the Waugh Company's outstanding common stock.

No decision by the Federal Trade Commission in the complaint involving the Mechanical Company has been published, but the record in this case contains ample evidence of a similar use of Swift traffic to promote the business of that company. Government Exhibit 94 (not printed) consists of over 75 separate communications between Swift officials and railroad officials or interoffice memoranda of railroads. Three typical examples of

these are set forth in the Appendix. (*Infra*, pp. 73–75.) Although the Mechanical Company is not a Swift subsidiary, letters on behalf of the former company were written on Swift & Company's stationery and were signed with that company's name. (*Infra*, pp. 73–74.)

It is significant that the decree enjoins defendants from dealing in, or owning stock in any corporation which is in the business of dealing in, "bumping posts for railroads." (R. 155, 158.) The Federal Trade Commission in its Report on the Meat-Packing Industry charged that Swift had used its traffic influence to induce railroads to buy bumping posts manufactured by the Mechanical Company. (Report of Federal Trade Commission on Private Car Lines, 1919, p. 191.)

At the time of the trial a general investigation into these "reciprocal-buying arrangements" was being conducted under the direction of the Interstate Commerce Commission. (R. 802.) For this reason the Government took no position as to the legality of such arrangements (R. 800), and the lower court is in error in stating (R. 1057) that the Government admitted that such a practice was "not illegal." The evidence was introduced as illustrative of appellees' power to attain a favored position in a business having no connection with the packing industry, not because of intrinsic merit, but because of the power given them by their vast size and many-sided activities.

CONCLUSION

It is respectfully submitted that the order of the Supreme Court of the District of Columbia should be reversed with directions to dismiss appellees' petitions for modification.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
CHARLES H. WESTON,
HAMMOND E. CHAFFETZ,
Special Assistants to the Attorney General.

FEBRUARY, 1932.

APPENDIX

Exhibit A (Gov. Ex. 94, Nos. 9, 44, 70)

SWIFT & COMPANY UNION STOCK YARDS

Chicago, Ill., June 23, 1928.

File A–15704 JUNE 23, 1928.

Mr. J. H. McCABE,

A. F. T. M., A. T. & S. F. R. R.,

Railway Exchange, Chicago.

DEAR SIR: In the early part of May I talked with you about the bumping post business for the Mechanical Manufacturing Company, in which the Swift family, and the writer, are interested. At that time you agreed to take the matter up with the Operating Department and post us.

I enclose a catalog showing these bumping posts, which most of the principal railroads of the country are using as their standard, and I should like very much to have you, in view of the large volume of competitive traffic that we are favoring you with, take whatever action is necessary to see that we secure your bumping post business for the future.

Please reply.

Yours respectfully,

SWIFT & COMPANY.

Per R. O. H.

SWIFT & COMPANY UNION STOCK YARDS

Chicago, December 27, 1928.

Mr. W. G. BIERD,

Receiver, Chicago & Alton R. R. Co.,

340 West Harrison St., Chicago.

DEAR Mr. BIERD: Our people (through the Mechanical Manufacturing Company, a corporation owned by the Swift family) are asking our railroad friends to consider the use of the draft gears and centering devices known as the Durable. We are expecting our railroad friends to use this gear to the extent of 25 to 33⅓ per cent on any renewals or new equipment built for their account.

We shall appreciate receiving an order from you at an early date.

Yours respectfully,

SWIFT & COMPANY.

Per R. O. H.

CHICAGO, *February 2nd, 1929.*

Mr. CAMERON: Referring to attached papers in regard to request of traffic manager O'Hara of Swift and Company in regard to their requesting us to use some of the Mechanical Mfg. Company's "durable compound draft gears" on some of the new freight car equipment for which we are now in the market:

Mr. O'Hara telephoned me Thursday last, the 31st, inquiring as to whether we intended to equip some of our new cars with their draft gear. He stated that he was about to revise their routing-chart on shipments from Chicago, Milwaukee, Sioux City, and other of their packing points to

the Southeast, and clearly indicated that if we went along with him we would get a good share of this business, but that if we did not we would lose some of it. Stated the Mechanical Mfg. Co. is owned by the Swifts, and he expected to trade the Swift Packing Co.'s traffic for some of our draft-gear business.

It is rather unusual for Mr. O'Hara to talk in this blunt way, and am satisfied, since he has seen fit to put it up to us in this direct manner, that we will lose some of the traffic which we have been receiving from Swift & Co. if we do not buy some of their draft gears.

They claim their gear is equal to that we are now using, and of course an unprejudiced test will demonstrate whether this is a fact or not.

Understand we are going to apply the Forsyth draft gear on 50 of our new freight cars to try that type of gear out. The Forsyth gear is also a reciprocity proposition.

Would strongly recommend that our Operating people meet with Mr. O'Hara and the proper officers of the Mechanical Mfg. Co. with view of coming to a satisfactory understanding if practicable to do so.

Mr. O'Hara asked that we let him know soon what our position will be.

W. HAYWOOD.

ic wh

EXHIBIT B (PET. EX. 118)

ARMOUR AND COMPANY

(*An Illinois Corporation*)

Domestic subsidiary and affiliated companies

	Per cent of voting stock owned or controlled
Armour and Company of Delaware	100
Armour and Company (New Jersey)	100
Armour and Company (Maine)	100
Armour and Company (Kentucky	100
Armour and Company, Ltd. (Louisiana)	100
Armour Creameries, Inc., Meridian, Miss	100
Armour Fertilizer Works, Chicago, Ill	100
Armour American Corporation, Chicago, Ill	100
Armour of Brazil Corporation, Chicago, Ill	100
Anglo-American Provision, Chicago, Ill	100
Atlantic Hotel Supply, New York City	100
Alexander Bros., Inc., Chicago, Ill	100
C. E. Blodgett Cheese, Butter & Egg Co., Marshfield, Wis	100
Badger State Tanning Co., Wisconsin	100
Cappan and Bertsch Leather Company, Chicago, Ill	100
Charlotte Leather Belting Co., Chicago, Ill	100
Charles L. Ireson Co., Gorham, Me	100
Chamberlain and Company, Inc., Boston, Mass	99.78
Detroit Beef Company, Detroit, Mich	100
Julius Dahlman, Inc., Brooklyn, N. Y	40
Duluth Creamery Produce Co., Duluth, Minn	50
East St. Louis Cotton Oil Co., East St. Louis, Ill	100
Friedman Manufacturing Co., Chicago, Ill	100
Fowler Packing Company, Kansas City, Kans	100
Fort Worth Poultry and Egg Co., Fort Worth, Tex	50
Fort Worth Rendering Company, Ft. Worth, Tex	50
Hammond Packing Company, St. Joseph, Mo	100
Hemphill Packing Company, Chicago, Ill	100
Iowa Rendering Company (Iowa corporation)	24.80
Lindner Packing and Provision Co., Denver, Colo	50
Lookout Oil and Refining Company, Chattanooga, Tenn	100
Luxor, Limited, Chicago, Ill	100

Meyer and Bush Company, Newark, N. J	40.29
Middletown Beef and Provision Company, Middletown, Conn	66.66
J. K. Mosser Leather Corporation, Chicago, Ill	93.78
J. K. Mosser Company (Penn.)	100
Nathan Schweitzer Company, Inc., New York, N. Y	51
National Fruit Canning Company, Seattle, Wash	87.5
New York Butcher's Dressed Meat Co., New York City	100
North American Provision Company (Illinois)	71.33
North American Provision Company (Delaware)	100
Parsons Tanning Company (Chicago)	100
Pittsburgh Provision and Packing Company, Pittsburgh, Pa	100
Price Produce Company, Bristol, Va	51
Smith Wright Company, Boston, Mass	100
Tennessee Chemical Company, Nashville, Tenn	100
Turner Creamery Company, South Dakota	100
Union Rendering Company (Denver, Colo.)	50
T. H. Wheeler Company, Boston, Mass	100
Western Casualty Company, Chicago, Ill	100
J. M. Wilson Company, Dover, N. H	75
Winslow Bros. & Smith Co. (Boston)	69.41

EXHIBIT C (PET. EX. 150)

LIST OF CORPORATIONS IN WHICH SWIFT & COMPANY OR ITS SUBSIDIARIES OWN STOCK [1]

Armstrong Packing Co., Dallas, Tex.
Associated Meat Co., Los Angeles, Calif.
Bimbler Company, Newark, N. J.
Boyd, Lunbam & Company, Chicago, Ill.
Brooks Balogna Co., Lebanon, Pa.
Canfield Commission Co., Newark, N. J.
J. F. Comstock & Sons Co., Providence, R. I.
Consumers Cotton Oil Mills, Fort Worth and other Texas points.
Corkran Hill & Co., Baltimore, Md.
H. C. Derby Co., New York and Philadelphia.
Detroit Food Purveyors, Inc., Detroit, Mich.
Engel Supply Co., New York, N. Y.
Evansville Packing Co., Evansville, Ind.
East Side Beef Corporation, New York, N. Y.

[1] The corporations in this list are 100% owned by Swift. (R. 642.)

Eckerson Co., Jersey City, N. J.
Forth Worth Packing Co., Fort Worth, Tex.
Farmers & Merchants Creamery Co., Denver, Colo.
Georgia Food Products Co., Moultrie, Ga.
Hammond Beef Co., Ann Arbor, Mich.
G. H. Hammond Co., Chicago, Ill.
H. L. Handy Co., Springfield, Mass.
J. J. Harrington Co., New York, N. Y.
Holland Butterine Co., Jersey City, N. J.
Geo. F. Hinricks, Inc., New York, N. Y.
Illinois Cold Storage Co., Chicago, Ill.
Independent Packing Co., Chicago, Ill.
Iowa Packing Co., Des Moines, Iowa.
Interstate Packing Co., Winona, Minn.
W. V. Joyner & Co., Smithfield, W. Va.
Metropolitan Hotel Supply Co., New York, N. Y.
Geo. Nye Company, Springfield, Mass.
Newton Packing Co., Detroit, Mich.
New York Veal & Mutton Co., New York, N. Y.
Northern Reduction Co., Milwaukee, Wis.
Omaha Packing Co., Chicago, Ill.
Plankinton Packing Co., Milwaukee, Wis.
E. K. Pond Co., Chicago, Ill.
St. Louis Hotel Supply Co., St. Louis, Mo.
Sturtevant & Haley Beef & Supply Co., Boston, Mass.

LIST OF CORPORATIONS IN WHICH SWIFT & COMPANY, ITS SUBSIDIARIES OR ITS OFFICERS OWN 10 PER CENT OR MORE OF COMMON STOCK [2]

Swift Refrigerator Transportation Co., Chicago, Ill.
Swift & Company Soap Works, Somerville, Mass.
Swift Wool Co., Boston, Mass.
Union Rendering Co., St. Paul, Minn.
United Dressed Beef Co., New York, N. Y.
Van Wagenen & Schickhaus Co., Newark, N. J.
Wallabout Market Packing Co., New York, N. Y.

[2] The first 7 corporations in this list are 100% owned by Swift and of the remaining corporations Swift's interest was 50% or more except in two cases. (R. 642.)

Andrews, Swift & Co. (partnership), New Britain, Conn.
F. & C. Crittenden Co., Rochester, N. Y.
Pauly & Pauly Cheese Co., Manitowac, Wis.
Swift & Company, Inc., Woonsocket, R. I.
Libby, McNeill & Libby, Chicago, Ill.
Fort Worth Rendering Co., Ft. Worth, Texas.
Independent Salt Co., Kanopolis, Kans.
Midland Warehouse & Transfer Co., Chicago, Ill.
Swift Coats Co., Greenfield, Mass.
Union Rendering Co., Denver, Colo.
Union Rendering & Refining Co., So. Omaha, Nebr.

EXHIBIT D

DIVERSITY OF SWIFT'S PRODUCTS AS DISCLOSED BY ITS YEAR BOOKS, 1921 TO 1930, INCLUSIVE (GOV. EX. 101, NOT PRINTED)

The edible products manufactured and sold by Swift include, in addition to every variety of fresh meats, cured meats, sausage, butter, eggs, cheese, poultry, lard, vegetable shortening, various kinds of oleomargarine, nut margarine, gelatine, and salad dressing. The Year Books do not state the volume of Swift's business in these various products, but Swift claimed to be one of the largest butter distributors in the country. (1927 Yr. Bk., p. 34.) Although Swift had been making gelatine, which is used in 90% of the ice cream manufactured, for only eight years, in 1929 it claimed to be one of the leading gelatine manufacturers. (1929 Yr. Bk., pp. 46–47.)

The inedible by-products manufactured and sold by Swift are still more numerous. Swift claims to be one of the largest distributors of high grade fertilizers. (1930 Yr. Bk., p. 43.) It owns three glue factories, manufacturing all grades of glue,

and claims to be producing 10% of all the glue manufactured in the United States. (*Ibid,* p. 49.) It manufactures and sells nearly a dozen varieties of soaps and cleansers, oleo oils, greases, tankage, and glycerine for automobile radiators. (*Ibid,* p. 51; 1922 Yr. Bk., p. 43.) Its packinghouse products are sold for the manufacture of a variety of pharmaceutical supplies (1930 Yr. Bk., p. 39; 1929 Yr. Bk., pp. 48–49; 1923 Yr. Bk., pp. 26–27).

In the manufacture of cottonseed oil the by-products include cottonseed cake, meal, and hulls, which are valuable feeds for livestock, and cotton linters, used for mattresses, upholstery, fibre silk, and many kinds of cotton textiles. (1929 Yr. Bk., p. 44.) Other animal and poultry feeds are manufactured from meat residues. (1923 Yr. Bk., p. 24.) The wool which it sells Swift divides into 72 classifications. (1926 Yr. Bk., p. 37.)

Swift's 1929 Year Book (p. 56) shows the following producing units and sales outlets:

Producing Units

Packing Plants	38
Produce Plants	70
Fertilizer Plants	17
Cotton Oil Mills	7
Refineries (shortening)	21
Soap Factories	3

Sales Outlets

Branch Houses, more than	400
Car Routes, more than	600
Foreign Sales Agencies, more than	100

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

THE UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE UNITED STATES

APPELLEES HAVE FAILED TO SHOW CHANGES SINCE 1920 WHICH WARRANT MODIFYING THE CONSENT DECREE TO PERMIT DEFENDANTS TO MANUFACTURE AND DEAL IN UNRELATED LINES

The sole issue presented to this Court by the Government is whether appellees have shown changes since 1920 which warrant modifying the consent decree to permit the defendants (1) to manufacture and handle (except at retail) unrelated lines and (2) to use their distributive facilities in this connection.

As bearing upon this issue, it is of fundamental importance to observe that there has been no change in the condition set forth in the Government's bill as the principal ground for enjoining the defendants from dealing in unrelated lines. The Government's request for such an injunction rested primarily upon the allegation that the defendants could handle unrelated lines through their nation-wide distributive system with comparatively no additional overhead expense and could employ this advantage "temporarily to fix prices so low as to gradually eliminate competition," with consequent danger of monopoly and restraint of trade. (R. 17.) There has been no material change in the extent or character of defendants' nation-wide distributive system. And appellees admit, indeed assert, that they can to-day use this system to handle unrelated lines with practically no additional expense. (Gov. Brief, pp. 45–46.)

(1) Changes affecting the purchase of livestock

Many of the changes upon which appellees rely (brief, pp. 57–79)—increased cooperative selling and direct marketing of livestock, development of market news service, the activities of order buyers, the Trustees' reports regarding stockyards, and the enactment of the Packers and Stockyards Act—are not relevant to this issue since they concern changes which relate to the purchase of livestock. The Packers and Stockyards Act does contain other provisions than those which deal with regulation

of stockyards, but we set forth later (*infra*, pp. 17–19) the grounds for our belief that the Act does not apply to dealings in unrelated lines. Except as to this Act, appellees have failed to point out any connection between the foregoing changes and the question whether defendants should be permitted to manufacture and deal in articles which are not related to the livestock industry.

(2) The defendants' financial losses in 1921

Appellees rely (brief, pp. 43–46) upon losses suffered by the defendants in 1921 and by Armour (including Morris) in 1922. Appellees do not attribute these losses to the decree, but they contend (brief, p. 46) that the losses substantially weakened their financial position. Swift's loss in 1921 was $7,812,000, but its subsequent earnings available for dividends total $112,276,000, or more than fourteen times its 1921 loss. (Pet. Ex. 72, R. 888a.) Cudahy's 1921 loss was $1,570,000, but its subsequent earnings available for dividends total $20,873,000, or more than thirteen times its 1921 loss. (*Ibid.*) Wilson's earnings available for dividends since its bankruptcy in 1924 total $8,375,000. (*Ibid.*) Armour's 1921 and 1922 losses have not prevented it from acquiring since 1920 companies having annual sales prior to acquisition of over $242,000,000. (Pet. Ex. 125, not printed.) We submit that appellees have failed to show that the defendants' financial position has been so weakened, in compar-

ison with 1920, that they no longer have the power to monopolize or restrain trade.

(3) The lack of any existing monopoly in the packing industry

Appellees also rely (brief, pp. 81–88) upon the fact that there is no monopoly in the meat-packing industry at the present time. But the Government's bill did not charge that the attempt to monopolize and the danger of monopoly in unrelated lines resulted from a monopoly of the meat industry; it charged that this danger resulted from the vast resources of the defendants and from the advantages given them by their distributive systems. The decree gave relief designed both to maintain free and fair competition in the meat industry and in addition to prevent danger of monopoly or restraint of trade in unrelated lines. We submit that it was not intended that success in achieving the former purpose should be a ground for removing the restrictions imposed to achieve the latter end.

(4) The alleged growth of competitors

Appellees (brief, pp. 48–52) allege as changes since 1920 the growth of competitors and the defendants' present position in the meat industry. We have set forth in our main brief (pp. 42–43) the limited effect which can properly be given to the figures relied upon by appellees to show an increased number of meat-packing concerns or establishments.

Appellees show that the sales of certain competitors have increased. Upon this showing they base the exaggerated statements (brief, pp. 51, 52) that, "With one exception all defendants' competitors increased the volume of their business in the decade between 1920 and 1930," and that defendants "have not been able to hold their own strength" in a field "wherein flourish increasingly successful and strong competitors."

The figures which appellees themselves select (brief, p. 49) to demonstrate their position in the industry show that their percentage of the total United States production in meats and lards was 38.2% in 1920 and 38.3% in 1929. Since the defendants have thus maintained their relative position and since their total business decreased slightly from 1920 to 1929, the fact that particular competitors increased their business must mean that other competitors have correspondingly lost business.

Appellees called officials of certain packing companies and also put into the record the sales and earnings of certain alleged packing companies. No general conclusions can be drawn from this selected showing. There is nothing to show that the increase in the business of these companies was due to normal competitive growth rather than to acquisitions of established concerns. Thus, appellees state (brief, p. 50) that the 1920 [1] sales of Adolf

[1] The record does not show the 1920 sales; appellees have given for that year the figure shown for 1921. (Pet. Ex. 71, R. 866a.)

Gobel, Inc., were about $7,000,000 and its 1929 sales about $46,000,000. In fact, the sales of this company increased only $1,235,000 from 1921 to 1927, while in the next two years, when two important companies were acquired, they increased over $37,700,000. (Pet. Ex. 71, R. 866a, 885.) The court below nevertheless accepted the increase of this company's business as attesting "the nature and extent of the competition in this business." (R. 1045.) The figure given by appellees (brief, p. 50) as the 1929 sales of John Morrell & Company covers a period of 13 months, although their own exhibit shows that the 1929 sales of this company were more than $7,300,000 smaller than those stated. (R. 546, Pet. Ex. 71, R. 866a.) Furthermore, the court below relied upon the larger figure. (R. 1045.) And appellees include among their expanding competitors the Beech-Nut Packing Company, which is not essentially a meat-packing company (*infra*, p. 7.)

(5) The earnings of defendants and of their competitors

In the matter of earnings, appellees (brief, p. 52) likewise compare defendants' earnings with those of 15 selected competitors. But even on this basis, no unfavorable change since 1920 is shown. Defendants' percentage of earnings on sales was 24% in 1920 and 39% in 1929 of the corresponding percentages for these competitors. Defendants' percentage of earnings on net worth was 35% in

1920 and 33% in 1929 of the corresponding percentages of these competitors.

We also submit that the most accurate basis for a comparison of defendants' earnings with those of their competitors is that used in the table on page 39 of the Government's brief, which includes all slaughterers which ship their products in interstate commerce. The business of slaughterers selling only intrastate is not comparable with that of the defendants. The exclusion of processors who do not slaughter is also justified because the packing operations of many of these concerns form an insignificant portion of their total business and they are therefore not truly representative competitors. Thus, the packing business done by the Beech-Nut Packing Company, the processing company repeatedly cited by appellees (brief, pp. 40, 48, 53), is a minor part of its total business, which consists of—

> bulk and sliced bacon, hams and beefs packed in glass jars and cartons, peanut butter, conserves, jams, jellies, preserves, marmalades, pork and beans, prepared spaghetti and macaroni products, and condiments; also chewing gum, mints, fruit drops, candy drops, tea biscuit dainties, and coffees. (R. 502.)

Appellees have not answered the statement in the Government's brief (p. 39) that they operated on a more favorable basis in 1929 than in 1920. And they have inadequately answered (brief, p.

144) the Government's contention (brief, pp. 40–41) that they presented no data as to earnings from their domestic packing business. We submit that there has been a signal failure to make an affirmative showing of an unfavorable change in the matter of earnings.

(6) Changed conditions in the food industry and the alleged present impossibility of a monopoly of foods

Changes in the food industry are admitted. These changes are relevant only in so far as their effect would be to remove the danger alleged to exist in 1920 that the defendants, if not restrained, might successfully monopolize or restrain commerce in particular items of food.

Both regular and voluntary chains have increased in size and importance since 1920, but appellees have failed to show that these chains are not potential customers, both in meats and in unrelated lines, to substantially the same extent as the retailers whom they have supplanted. There is no evidence that voluntary chains manufacture any of the products which they sell and the extent to which the larger regular chains are shown to manufacture their own products is insignificant. As appears from appellees' brief (pp. 90–92), the five largest chains own only 32 factories or plants (other than bakeries) producing unrelated lines, as follows:

> Great Atlantic & Pacific Co.: 9 general food factories, 7 coffee roasting plants, 6 salmon canneries.

Kroger Grocery Co.: 1 candy factory, 1 beverage factory, 1 coffee roasting plant, 1 packing plant for olives and bottled goods.

Safeway Stores, Inc.: 1 candy factory.

American Stores Co.: 1 fruit and vegetable canning plant.

First National Stores, Inc.: 3 manufacturing plants.

The sales of the Great Atlantic & Pacific Company are almost four times those of the next largest chain (Pet. Ex. 69, R. 826a) and, as stated above, this chain has the largest number of food factories. About 17% of its sales are under its own brands and of the sales under its own brands (other than coffee), it manufactures only about 10%. (R. 740.) Therefore only about 1.7% of its total sales are of goods (other than coffee) manufactured by it and sold under its own brands. 58% of its sales are unbranded goods (R. 740), but the record does not show to what extent, if any, the company manufactures goods which it sells unbranded.

In the light of these facts, we submit that the following statement in appellees' brief (pp. 97–98) is unwarranted:

> The 120,000 chain stores will not be generally available to the defendants as customers for groceries, but will continue their present methods of manufacturing foods extensively and buying the remainder from the same source where the defendants will have to buy, namely, the manufacturers of foods.

Appellees allege (brief, p. 107) that "the ever-increasing extent to which chain organizations are performing packing-house operations" is a change of major importance. But the Kroger Company, referred to as the "outstanding example," operates only two slaughtering plants, one of which it has owned for over twenty years, and one processing plant for sausage. (R. 501.) Its total 1929 sales of its meat-packing products were less than $10,500,000 (R. 724), or about 1% of the total business of either Swift or Armour. Out of 1500 chain-store organizations (R. 517, 567), appellees refer (brief, p. 108) to a list introduced by them of 83 chain-store organizations which perform any meat-packing operations. Many of these organizations are negligible in size, as shown by the small number of stores or markets operated; only 10 of them do any slaughtering and of these 10 only 2 are shown to operate more than 15 stores or 15 markets. (Pet. Ex. 90, R. 921–936.)

Appellees allege (brief, p. 108) that "chain organizations" are now operating 30 processing plants as compared with 8 such plants operated by them in 1920. The testimony to which appellees refer (R. 533) does not state that the concerns listed are chain organizations. Included therein are such food manufacturers as General Foods Corporation and National Dairy Products Co. and such packers as Adolf Gobel, Inc., and Hygrade Foods Products Corporation. Only 4 of these

companies are included in the list introduced by appellees of chain stores performing meat-packing operations. (Pet. Ex. 90, R. 921.) These 4 companies now operate 18 processing plants, 15 of which are operated by the Great Atlantic & Pacific Co. (R. 533.) In all but one of these 15 plants the only processing done is bacon slicing. (R. 925–927.)

Appellees also rely (brief, pp. 94–95) upon the growth of general food corporations, instancing National Dairy Products Corporation, the Borden Company, and General Foods Corporation. The two former would not furnish competition in any of the unrelated lines in which the defendants will be permitted to deal under the decree as modified except caramels and dried fruit juices (Borden). (R. 499, 846.) General Foods Corporation and Standard Brands, Inc., manufacture and wholesale certain nationally advertised branded foods (R. 852, 854–856), which compose an insignificant portion of the articles in which defendants were forbidden to deal. Appellees have not pointed to a single concern of substantial size that has grown up since 1920 which would compete with them in

the manufacture and sale of the other articles falling within the prohibitions of the fourth and fifth paragraphs of the decree.

There is no inconsistency, as suggested by appellees (brief, pp. 83–84), between the testimony of the president of the Great Atlantic & Pacific Company, that over 90% of its meats in its eastern division are purchased from the defendants and the evidence that over the country as a whole 35% of its meats are purchased from the defendants. The president was referring to that part of the territory in which the company's meat business had been fully developed. (R. 744.) Appellees' attempt to discredit this testimony is their only answer to the contention of the Government (brief, pp. 55–56), based upon the finding of the court, that chain stores are largely dependent upon the defendants for their meat supplies. With the great development of stores selling both meats and groceries (R. 745, 1058), the competitive advantage given the defendants, if permitted to furnish retailers with both meat and groceries, is greater to-day than in 1920.

Appellees are in error in stating (brief, pp. 13, 101) that the distribution of foods is inadequate at the present time (R. 688, 773, 775, 797). The effect upon existing facilities of permitting the defendants to distribute groceries is shown by Mr. Snyder, the witness upon whom appellees chiefly rely, who said (R. 475):

> Of course if groceries are handled through these branch houses that will withdraw them to a degree from the existing facilities of distribution, and branch houses now employed in handling them will either become superfluous or available for something else—available to sell to somebody for salvage or other uses.

(7) Alleged increased cost of branch-house operation

Appellees contend (brief, pp. 109–113) that changes in methods of distribution adversely affect their branch-house business. They do not deny that the proportion of their business done through branch houses has been maintained, but they assert (brief, pp. 112–113) that these houses operate on a less profitable basis. They point to an increase from 1923 to 1930 in Swift's branch-house expense per cwt. of business handled, ignoring the fact that during the same period this expense decreased per dollar of sales handled. In 1923 Swift's branch-house sales were $423,262,408 and its branch-house expense was $21,140,302, or 4.99¢ per dollar of sales; in 1929 (1930 figures not given) its branch-house sales were $599,170,477 and its branch-house expense was $27,518,672, or 4.60¢ per dollar of sales. (Pet. Exs. 144, 145, R. 957, 958a.) This comparison gives effect to changes in the price level, whereas the test used by appellees disregards this all-important consideration.

That branch-house operation is still the most profitable method of doing business is shown by the

testimony of a vice-president of Swift. He said (R. 649):

> We have increased our number of branches since 1920, largely to serve growing territories, as it was the only method to get that class of business, and we did it because it was more advantageous to us.

Appellees make the contention (brief, pp. 125–126), not urged in the court below, that groceries can be used to make up the minimum weight in route cars in only certain sections of the country. An official of the Swift car route department testified that in practically all car route territories all commodities go to make up the minimum weight and that he did not think there would be any difficulty in obtaining a change in the tariffs in those sections of the country where the rule is otherwise. (R. 671.) It would seem clear that such a change in tariffs could be obtained since the decision in *Swift & Co.* v. *Akron, C. & Y. Ry. Co.*, 167 I. C. C. 355, 364, holding it unreasonable to exclude as a credit against the minimum charge on peddler cars the revenue on other articles shipped in the same car.

THE PACKERS AND STOCKYARDS ACT DOES NOT APPLY TO DEALINGS BY PACKERS IN UNRELATED LINES.

Appellees (brief, pp. 73–77) contend that the provisions of the Packers and Stockyards Act[2]

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[2] The relevant portions of the Act are set forth in the Appendix, *infra*, pp. 20–25.

which make it unlawful for any packer to engage in practices in interstate commerce which are unfair, discriminatory or in restraint of trade and which authorize the Secretary of Agriculture to enforce these prohibitions, apply to the entire interstate business, whether related to the packing industry or not, of any one who is a packer as defined in the Act. We submit that this interpretation of the Act is erroneous.

The title of the Act reads:

> An Act To regulate interstate and foreign commerce in livestock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes.

Section 2 (a) (6) provides that the term "commerce," when used in the Act, means interstate and foreign commerce. Section 2 (b) provides in part:

> For the purpose of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, * * *.

While the above provisions may be primarily intended as a declaration of the continuity of the

current of interstate commerce, it is significant that this continuity is defined solely in terms of the interstate commerce set forth in the title of the Act.

Section 201 provides that the term "packer," when used in the Act, means any person engaged in the business—

> (a) of buying live stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, * * *.

But the section further provides that a person falling within the classification of clause (a) or (b) is a packer within the meaning of the Act if he is also engaged in the business—

> (c) of manufacturing or preparing live-stock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, in commerce; * * *.

If the Act was intended to cover every activity of a packer, it was unnecessary and useless to provide that a person who is a packer because engaged in a business falling within (a) or (b) above is a packer if also engaged in a business falling within (c) or (d) above. The definition of packer thus reinforces the conclusion to be drawn from the title of the Act and its description of interstate commerce, that Title II of the Act regulates only com-

merce in livestock, poultry, eggs, and livestock, dairy, and poultry products.

We submit that the statement made by Mr. Haugen, which appellees quote (brief, p. 76), does not have the broad meaning attached to it by appellees. Mr. Haugen, in discussing the history of certain changes in his original bill made by the House Committee, said (Cong. Rec., Vol. 61, pt. 5, p. 4781):

> At the same time the farm bureau suggested that the definition of the term "packer" be so amended as to confine packers to those manufacturing or preparing meats or meat-food products for sale or shipment in commerce. While recognizing the justice of the complaint that the definition in the original Haugen bill might be construed to include independent tanneries, fertilizer plants, and other industries using by-products of the packing industry, the committee at once perceived that the adoption of the suggestions of the American Farm Bureau Federation would be to leave outside of all regulation such industries when conducted as subsidiaries of the packing industry. It[3] therefore amended the Haugen bill in such manner as to relieve from regulation these outside industries only when having no affiliation with a packer, but subjecting the packer to com-

[3] Appellees are in error in stating that this word refers to the conference committee. The reference is to the House Committee on Agriculture.

plete regulation, no matter what line of business he goes into.

The words, "no matter what line of business he goes into," appear to be used in connection with "these outside industries," and these words refer back to "industries using by-products of the packing industry."

The Secretary of Agriculture has never exercised any jurisdiction over the business of packers in unrelated lines. (R. 414.) The failure to exercise such jurisdiction[4] constitutes a long-continued administrative construction which is entitled to great weight. *Universal Battery Co.* v. *United States,* 281 U. S. 580, 583; *Fawcus Machine Co.* v. *United States,* 282 U. S. 374, 378. There is no inconsistency in administrative construction, as appellees seem to suggest (brief, pp. 75–76), in the fact that the Secretary has exercised jurisdiction under Title II over a private stockyard operated by a packer. The operation of such a yard directly involves commerce in live stock.

Appellees also assert (brief, p. 75) that Congress certainly did not intend to place packers partly under the jurisdiction of the Secretary of Agriculture and partly under the jurisdiction of the Federal Trade Commission. On the contrary, we believe it appropriate to give to different agencies

[4]Appellees urge (brief, pp. 77, 118) both that a large force is engaged in administering the Act and that many meat-packing concerns are now selling unrelated lines.

jurisdiction over totally unrelated activities, just as the packers may be subject to the jurisdiction of both the Interstate Commerce Commission and the Secretary of Agriculture. We submit that Congress intended the Federal Trade Commission, rather than the Secretary, to act as the enforcing agency if, for example, a packing company engaged in unfair practices in the sale of railroad bumping posts or draft gears for freight cars.

The provisions of Section 406 do not in any way support appellees' interpretation of the Act.

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MARCH, 1932.

APPENDIX

The Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 163, 168, 169 (U. S. C., Ttitle 7, Sec. 181 *et seq.*), provides in part as follows:

An Act To regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—DEFINITIONS

This Act may be cited as the "Packers and Stockyards Act, 1921."

SEC. 2 (a) When used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "meat food products" means all products and by-products of the slaughtering and meat-packing industry—if edible;

(4) The term "live stock" means cattle, sheep, swine, horses, mules, or goats—whether live or dead;

(5) The term "live-stock products" means all products and by-products (other

than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from live stock; and

(6) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(b) For the purpose of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of live-stock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

TITLE II.—PACKERS

SEC. 201. When used in this Act—

The term "packer" means any person engaged in the business (a) of buying live-stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing live-stock products for sale or shipment in commerce, or (d) of marketing meats, meat foot products, live-stock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing live-stock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing live-stock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggre-

gate 20 per centum or more of the voting power or control in such business of manufacturing or preparing live-stock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

SEC. 202. It shall be unlawful for any packer to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in com-

merce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

* * * * *

TITLE III—STOCKYARDS

* * * * *

TITLE IV.—GENERAL PROVISIONS

* * * * *

SEC. 406. (a) Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission.

(b) On and after the enactment of this Act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this Act, complaint has been served under section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define

its power and duties, and for other purposes," approved September 26, 1914, or under section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.

U. S. GOVERNMENT PRINTING OFFICE: 1932

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 568

UNITED STATES OF AMERICA, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., Appellants,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS IN NO. 569.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 568

UNITED STATES OF AMERICA, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., Appellants,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS IN NO. 569.

JURISDICTION.

This is an appeal from a final decree modifying a former final decree in a suit brought by the United States under the Anti-Trust laws. The right of these Appellants to appeal is discussed in the statement heretofore filed in compliance with Rule 12 of this Court and this Court has found that probable Jurisdiction exists.

THE ISSUES.

There is here presented issues as to the power of a court nine and a half years after the entry of a consent decree to set aside or materially modify it; and, if such power exists, whether or not the facts presented justify its exercise. The assignment of errors (R. 1120) and the points on which these Appellants rely (R. 1181) show in detail the basis for the propositions argued.

SUMMARY OF ARGUMENT.

1. A Federal Court of Equity, in a proceeding brought under the Anti-Trust laws, having with the consent of all the parties entered a valid final decree enjoining the defendants, has no jurisdiction without the consent of all such parties to substitute after over nine years another and radically different decree.

2. If jurisdiction existed, no material alteration of the original decree should be made unless there is definite proof of facts clearly showing that such modification is legally proper and demanded by the equities of the parties affected.

3. No such modification, whatever the jurisdiction of the court, should be granted where, as here, the petitioners therefor fail fully and fairly to disclose all the relevant facts within their knowledge or in their power to produce.

4. No modification is justified where the petitioners therefor are shown to be guilty, through their agents engaged in the performance of their businesses, of violations of the anti-trust laws of the United States and of the consent decree.

5. As petitioners have received advantages and other parties have waived rights by the contract-consent-decree, petitioners have no equitable right to a modification where, as here, it is impossible to restore the former status.

6. Where petitioners continue to enjoy, whether legally or not, advantages in the transportation by common carriers of their commodities not open to their competitors, there is danger of monopoly and the original contract of settlement may not be changed by any court.

7. A showing of changes in methods of doing business foreseen or foreseeable at the time the contract-decree was agreed on and entered, furnishes no justification for any material change in the contract.

STATEMENT OF THE CASE.

A. Chronological History.

In 1898, a committee of the Senate was appointed and after two years reported that petitioners and others were guilty of restraints of trade.[1]

In 1902, the United States filed its bill to enjoin Swift & Company and other packers including as defendants seven corporations, one partnership and twenty-three individuals, from violations of the Anti-Trust laws and this Court, on January 30, 1905, sustained with modification, the injunction granted May 3, 1903.[2] That decree as modified, is yet in force, and among other things prohibits Armour and Swift from "by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold either directly or through their respective agencies."

The decree further prohibits obtaining freight charges "at less than the regular rates," "by means of rebates or *by any other device.*" The House of Representatives on March 7, 1904, reciting certain conditions, requested the Secretary of Commerce and Labor among other things to investigate[3] "Whether the said conditions have resulted in whole or in part from any contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of commerce among the several States and Territories or with foreign countries."

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[1] Report of U. S. Senate Committee on the Transportation and Sale of Meat Products, 51st Cong., 1st Sess., Senate Report No. 829, p. 446.

[2] United States v. Swift & Company, et al., 122 F. 529; Swift & Company, et al. v. United States, 196 U. S. 375.

[3] Document No. 382, 58th Cong., 3rd Sess., Report of the Commissioner of Corporations on the Beef Industry, dated March 3, 1905. This was transmitted to the Congress by President Roosevelt on March 3, 1905.

The packers were then Armour, Swift, Morris, National Packing, Schwarzschild & Sulzberger, and Cudahy Packing Companies, and were generally known as the Big Six.

As a result of court orders the National Packing Company was dissolved and the packers became the Big Five.[1]

Prior to 1917, wholesale grocers experiencing the adverse effect of the power and practices of the Big Five, presented their difficulties to the President. In this the grocers were joined by live stock growers. President Wilson, on February 7, 1917, referred these complaints to the Federal Trade Commission to investigate and report among other things facts[2] "bearing on alleged violations of the anti-trust acts, and particularly upon the question whether there are manipulations, controls, trusts, combination, conspiracies, or restraints of trade out of harmony with the law or the public interest." The report of the Commission was printed and referred by the President to the Attorney General.

In July, 1919, wholesale grocers and associations of wholesale grocers filed complaints before the Interstate Commerce Commission alleging that the railroads of the country, by their rates, tariffs and practices, gave to the Big Five packers an undue and unreasonable preference and advantage to the prejudice and disadvantage of complainants. Appellees here intervened in these proceedings, pleaded that by the consent decree entered after the complaints were filed, that no such competitive relation existed between them and the grocers as entitled the grocers to object to the preferences if any existed. The predecessor of the interveners in whose behalf this brief is filed, believed that this plea was good and did not, for that reason, further prosecute its complaint (Peti-

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[1] This Court in 1922 referred in Stafford v. Wallace, 258 U. S. 495, 499, to some of this history, saying that it appeared therefrom "that for more than two decades, it had been charged that * * * the Big Five were engaged in a conspiracy in violation of the Anti-Trust law * * * ."

[2] Report of the Federal Trade Commission on the Meat-Packing Industry, Summary and Part 1. The first part of this comprehensive report is dated June 24, 1919, and other parts followed shortly thereafter.

tioners' Exhibit 165, R. 1017). The Commission, quoting the contentions of the Petitioners-Appellees and other packers, said:

> "They assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

and on another page said:

> "The record indicates that the wholesale grocer handles a comparatively small quantity of perishable freight."

The conclusion of the Commission was that no comprehensive relief should be granted on the complaint which was presented.[6]

The Attorney General, on January 17, 1920, testifying before a Senate Committee, described how he found this report when he entered office in March, 1919, how he referred the report to three able and experienced lawyers to "examine the record, analyze it, and make a report as to what sort of case that record had presented." These attorneys having "after several months," made "a comprehensive report," the Attorney General studied such report and "concluded that the Department of Justice would be justified in bringing action against the packers." This conclusion having been reached, the Big Five offered to consent to an adjustment and the consent decree of February 27, 1920, was entered.[7]

B. Judicial History of the Consent Decree.

The consent of the parties became the decree of the court on February 27, 1920 (R. 153).

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[6] National Wholesale Grocers Asso. v. Director General, 62 I. C. C. 375, 381, 388. Record here 1012 ff., and Petitioners' Exhibits 165, 166.

[7] See report dated March 23 and April 21, 1921, entitled Packers' Consent Decree, Senate Resolution 211, pp. 319 to 322 and 925 to 927, and compare Vol. 2 of the report dated March 1, 1923.

Of these Appellants, Mr. Justice Wendell P. Stafford in refusing to strike their intervention, said in part (R. 187):

> "1. The decree was, in part, at least, the fruit of their own efforts;
>
> "2. They abandoned the pursuit of other remedies in reliance upon this decree;
>
> "3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf;
>
> "4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection;
>
> "5. The decree ought not to be modified unless the Court is convinced that the public interest requires it; and the petitioners fairly represent a large and well defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the Court facts or reasons which, among others, the Court ought to hear and consider before allowing the decree to be changed."

About September 10, 1921, these Appellants, interveners below, heard that an agreement had been reached between the Attorney General then in office and the defendants-petitioners-Appellees, to set aside in whole or in part, such decree. To prevent this, these Appellants intervened. Later, the United States moved to strike the intervention and the lower court denied such motion.[5]

No agreement to set aside the decree was consummated.

Congress passed in 1921, the Packers and Stockyards Act.[6] Later, on April 19, 1922, California Cooperative Canneries, a congener of Armour & Company and Associates, herein

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[5] See the original intervention (R. 170), the amended intervention (R. 183), the motion to strike (R. 182) and the opinion and order of the court thereon (R. 187).

[6] 42 Stat. 159, Stafford v. Wallace, 258 U. S. 495.

referred to as Armour, sought by intervention to have the consent decree annulled but this contention did not meet the approval of this Court.[10]

In 1923, Morris and Company was absorbed by Armour and the Big Five became the Big Four (R. 613).

On November 5, 1924, Appellees here moved to vacate the consent decree, claiming it was void. This effort of Appellees-Petitioners to escape from their consent also failed.[11]

Appellees Swift and Company and Associates, herein called Swift, and Armour, in August, 1929, filed their petitions on which relief was later granted by the decree here appealed from. On April 2, 1930, amended petitions were filed as substitutes for the original petitions (R. 200, and 255).

These Interveners-Appellants and another wholesale grocers association moved to strike these petitions, alleging that the court below lacked jurisdiction to grant the prayers of the petitions (R. 310 and 313). These motions were argued and overruled (R. 319). The controversy was then tried before the Honorable Jennings Bailey, a Justice of the Supreme Court of the District, who wrote an opinion (R. 1039 ff.), filed findings of fact and conclusions of law (R. 1110), and entered the decree now here on appeal (R. 1060).

Appeals were filed by the United States and by the intervening wholesale grocers and wholesale grocers associations (R. 1131).

NO JURISDICTION IN COURT BELOW TO ENTER DECREE APPEALED FROM.

STATEMENT.

A consent decree held by this Court to be valid,[12] was entered February 27, 1920. This effort of Appellees to set aside or modify this decree was not made until petitions

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[10]United States v. California Cooperative Canneries, 279 U. S. 553.

[11]Swift & Co. v. United States, 276 U. S. 311.

[12]Swift & Co. v. United States, 276 U. S. 311; United States v. California Cooperative Canneries, 279 U. S. 553.

therefor were filed in August, 1929. A summary statement of the grounds of these petitions may be taken from the introduction to that of Swift, as: "On account of certain radical and revolutionary changes which have occurred" since the entry of the original decree, and petitioners Swift then proceed to describe these changes as follows:

> " * * * in economic conditions, merchandising methods, statute law of the United States and the interpretations thereof, which make this decree unjust, unfair, inequitable and oppressive to these defendants, unnecessary and against the public interest." (R. 201).

Motions to dismiss these petitions were filed, argued and denied. (R. 319).

PROPOSITION.

1. A FEDERAL COURT OF EQUITY IN A PROCEEDING UNDER THE ANTI-TRUST LAWS, HAVING WITH THE CONSENT OF ALL THE PARTIES ENTERED A VALID FINAL DECREE ENJOINING THE DEFENDANTS, HAS NO JURISDICTION WITHOUT THE CONSENT OF ALL SUCH PARTIES TO SUBSTITUTE, AFTER OVER NINE YEARS, ANOTHER AND RADICALLY DIFFERENT DECREE.

ARGUMENT AND AUTHORITIES.

The petitions filed by Appellees are but motions, nine and a half years after its entry, to annul a decree. In view of former holdings of this Court, it cannot be contended that the original decree was not valid and final and the basis of the petitions is that changed conditions give a court at all times power to alter and annul its decrees. Essentially, the petitions are bills of review.

There are two legal contentions which arise out of these efforts to review a final decree. One deals with the decree as a final decree, and the other with a decree not only valid and final, but one to which the petitioners consented.

A. A Final Decree Cannot Be Annulled Or Substantially Modified Except As Authorized By Statute or Equity Rules.

Paragraph 18 (R. 167) of the original consent decree, retains a limited jurisdiction but the jurisdiction so retained is for the purpose stated therein "as may become necessary and appropriate for the carrying out and enforcement" of the decree; and the words "application that the parties may make with respect to this decree," refer to what is "appropriate" in the "enforcement" thereof.

The Equity Rules of the Supreme Court of the District of Columbia permit petitions for rehearing but in a case like this, only during "the term at which the final decree of the court shall have been entered and recorded."[13] A bill of review under such rules, may be filed only "within two years after the entry of the decree."[14] In discussing the rule of limitation when the bill of review is based on "new-discovered facts and evidence," Judge Story said:[15]

> "There can be no doubt, that it will be a good bar, that the Bill of Review is not brought within the period limited for writs of error, after the discovery of the new facts or evidence."

As will later appear, and as shown in Appellee's petitions, the facts they now claim as showing changed conditions were known, some as early as 1921, and all were adumbrated even in 1920. The Packers and Stockyards Act relied on (R. 234), was passed August 15, 1921;[16] chain stores existing and growing prior to 1920 began their more rapid expansion

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[13]Rule 45.
[14]Rule 58.
[15]Story, Equity Pleadings, 6th Ed., Sec. 419.
[16]42 Stat. 159.

in 1921 or 1922 and this expansion continued to 1929,[17] and all the alleged changes in conditions were known to all the world to have begun and to be progressively increasing prior, certainly, to 1925.

If petitioners had not been guilty of laches and were not barred by the limitation of the rules of practice, it is submitted that this is not a case in which the court below, at the time when the petitions were filed, had jurisdiction.

The case of *Ladner v. Siegel*,[18] with annotations, refers to the leading decisions of State Courts holding that an injunction decree, operative in the future, may, under some circumstances, be modified. The grounds justifying such modification are stated in this case:

> "The modification of a decree in a preventive injunction is inherent in the court which granted it, and may be made, (a) if, in its discretion judicially exercised, it believes the ends of justice would be served by a modification, and (b) where the law, common or statutory, has changed, been modified or extended, and (c) where there is a change in the controlling facts on which the injunction rested."

The court was dealing with a case where an injunction was issued preventing the construction and use of a public garage in an "exclusively residential" district and which decree was modified because the district had become "not an exclusively residential district within the meaning of that term." We need not and do not question the propriety of

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[17] The Great Atlantic & Pacific Tea Company has grown each year since 1922 (Pet. R. 826A). Kroger Grocery & Baking Co. since 1920 (Pet. R. id.). The Report of the Federal Trade Commission relied on was published February 20, 1925; the same Report shows that information about slaughtering and meat packing establishments was known February 17, 1925. Reliance is had on the report of the Secretary of Agriculture showing statistics for 1923. The decision of the Interstate Commerce Commission relied on was rendered June 22, 1921, 62 I. C. C. 375.

[18] 298 Pa. 487, 148 Atl. 699, 68 A. L. R. 1172.

the decision in *Ladner v. Siegel*, but we submit that there is nothing in the facts here which brings this case or other cases cited therein within the principles of that decision.

Here the defendants-Appellees show a long history of monopolistic conduct, efforts to prevent which had failed; and it was deemed necessary, in order to prevent this and protect the public, that they should limit their respective businesses to the manufacture, transportation and sale of meat and meat products. In their brief filed September 7, 1920, in the Interstate Commerce Commission (Exhibits of Petitioners, Nos. 165 and 166), Appellees stated the argument they now make to support their claims for release from the decree as reasons why they were doing the things enjoined by the decree.

They said:

> "The packers had found it to be economical, from a business standpoint, in view of the organization and facilities already existing and necessary for the sale of fresh meats and packing-house products, to utilize that organization and those facilities for the handling and sale of certain other articles. Such utilization tended to reduce the overhead expense as well as the selling expense in connection with all of the articles dealt in and was, therefore, a practice of benefit to the public as well as to the individual packer. Nevertheless this action of the packers brought about numerous protests, the present proceeding (62 I. C. C. 375) being in fact one of the efforts made by certain classes of merchants towards eliminating the competition in certain articles of the packing companies."

Having thus described conditions which, if they ever existed, continue now, Appellees explained why they consented, saying:

> "It was in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be disputed by any intelligent mind that the packers defendant in the equity proceeding consented to the entry of the decree in that case."

The "controlling facts" as to the practices described above which existed in 1920 and prior thereto and were potent in producing the complaints which caused the bringing of the suit by the United States and as to Appellees' reasons for agreeing that they would discontinue former practices, existed then and exist now and will continue so long as Appellees use their organizations and facilities "for the handling and sale" of articles other than meats.

B. A Final Valid Consent Decree Cannot Be Substantially Altered Except By Consent.

This court, in *Swift & Company v. United States*,[11] stated what, we submit, are controlling rules here. It was there said:

> "Under the English practice a consent decree could not be set aside by appeal or bill of review, except in case of clerical error." * * *
>
> "In this Court a somewhat more liberal rule has prevailed. Decrees entered by consent have been reviewed upon appeal or bill of review where there was a claim of lack of actual consent to the decree as entered." * * * "or that there was lack of federal jurisdiction because of the citizenship of the parties." * * *
>
> "But 'a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause.' " * * *

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[11] 276 U. S. 311, 324 and authorities cited. See also: Nashville, etc., R. R. Co. v. United States, 113 U. S. 261, 266; Thompson v. Maxwell Land Grant & R. Co., 168 U. S. 451, 463; McGowan v. Parrish, 237 U. S. 285; United States v. Babbitt (1882), 104 U. S., 14 Otto 767; R. R. Co. v. Ketchum, 101 U. S. 289; Hodgson v. Vroom, 266 Fed. 267, 268, 269; Wilson v. Haber Bros., 275 Fed. 346, 347; Harniska v. Dolph (1904) 133 Fed. 158, 66 C. C. A. 224; Garrett & Co. v. Sweet Valley Wine Co., 251 Fed. 371; Ruling Case Law Vol. 10, Sec. 347; Daniell's Chan. Plead. & Prac., 4th Ed., Vol. 2, pp. 973, 974; Edney v. Edney, 81 N. C. 1; and 21 C. J. 813, 815.

> "Where as here, the attack is not by appeal or by bill of review, but by a motion to vacate, filed more than four years after the entry of the decree, the scope of the enquiry may be even narrower."

It would seem that the decisions of this court settle the issue, but Appellees in the court below relied on decisions to which we now refer.

In *American Press Association v. United States, 245 Fed. 91*, a decree was construed. It is true that the word "modification" is used in the petition, but the provisions of the original decree, copied at p. 92, show that these provisions merely require enforcement in order to accomplish what the defendant in the original suit desired and sought.

The case of *United States v. DuPont, 273 Fed. 869*, is another case showing the distinction between construction and modification. At p. 872, the court said:

> "It (meaning the motion to construe or interpret), will not change any term or provision of the final decree as it bears on the issues decided or on the parties concluded thereby."

At p. 873, the court said that it would have no jurisdiction to make an order that would violate the decree, and that what it was doing was "looking to the continued prevention and restraint of violations." The application there made was by a party not in the original suit and the court said it was exercising only the power "to make its *enforcement* conform to conditions." In stating the question near the bottom of p. 873, it is plain that the court was discussing a construction—not a change—of the decree, and on p. 874, the words "interpret" and "construe" are used. At p. 875, the court says it is to determine "whether it (the relief asked) would violate the decree in any of its aspects."

It is true that the United States agrees that the court below had jurisdiction to modify the consent decree, but it does not agree to any modification, and consent cannot confer jurisdiction especially when as here, there are others interested who abandoned other remedies in reliance on the contract-decree and who become parties by intervention after the consent was entered but before the petitions to modify were filed.

THERE ARE NO SUFFICIENT FACTS TO JUSTIFY ANY MODIFICATION.

PROPOSITION.

2. IF JURISDICTION EXISTED, NO MATERIAL ALTERATION OF THE ORIGINAL DECREE SHOULD BE MADE UNLESS THERE IS DEFINITE PROOF OF FACTS CLEARLY SHOWING THAT SUCH MODIFICATION IS LEGALLY PROPER AND DEMANDED BY THE EQUITIES OF THE PARTIES AFFECTED.

Nowhere is this proposition supported more definitely than in *United States v. Discher, 255 Fed. 719*, where the original decree provided that:

> "The court *retain jurisdiction* to enable the parties to apply for modification if it be thereafter shown that the provisions have become inadequate to maintain competition or have become unduly oppressive to the defendants."

The court then refused to modify the decree and said (p. 720):

> "To modify the decree to which the defendants consented with their eyes open I should have convincing proof that it is unjust and burdensome."

That no contract, decree or contract-decree will lightly be set aside is so fundamental that authorities to support the proposition are not needed.

The opinion of the court below, as we construe it, shows that there is no sufficient proof justifying the decree of modification.

THE OPINION OF THE COURT BELOW ANALYZED.

The contentions of Appellees that the growth of chain stores, the integration of food distributing agencies and the broadening activities of small packers constituted changes justifying modification, are unsupported in the opinion of the Court (see Opinion, R. 1039 to 1059). The Court found that

both Appellees had about the same volume of business in 1929 as in 1920 (R. 1045); that chain stores had increased after 1920 (R. 1046); that integration had also increased (R. 1047); and that the percentage of profits on net worth for 1929 of Swift was 5.78; of Armour, 3.54; of Cudahy, 6.26 (R. 1047). Following these findings, the Court said (R. 1049):

> "The petitioners lay great stress upon the buying power of these large chain stores;"

and after some discussion, continued (R. id.):

> "I think that the petitioners exaggerate these dangers. The chains do a very small part of the slaughtering business, and are themselves largely dependent upon the petitioners for their supplies. There is constant and keen competition, and I do not see that the size of the chains give them any unfair advantages over the packers. The imminent development of the quick freezing process will largely do away with the necessity of any immediate disposition of perishable products."

The Court then calls attention to "some rather singular facts" as to the profits of Appellees and says (R. 1049):

> "Armour's profits have varied largely from year to year and have not followed inversely the rise of the chain stores. Swift & Company's profits have exceeded Armour & Company's upon substantially the same amount of business. Whether these variations may be due to differences in the success of their foreign business, or to difference in skill in management does not appear, and the failure to account for this largely weakens the argument of the petitioners based upon their small returns in business. *I think that there has been a failure to make a full disclosure of the facts in this respect.* Swift & Company have paid dividends *regularly for forty-four years and from 1920 to 1929* at the rate of eight per cent and during the same time has added to its surplus and reserve over sixteen million dollars. The percentage in profits of the Cudahy Packing Company has exceeded Swift's during the same period.
>
> "On the whole, therefore, I do not think that the claim of the petitioners that the development of the chain stores has caused any great loss in their profits has been established." (Italics supplied).

In this connection, it should be noted that Appellees give no facts as to their earnings prior to 1920, and it should also be remembered that each of the Appellees is engaged in many businesses other than that of converting live animals into meat; that they conduct businesses in foreign countries and they wholly failed to explain whether or not these outside and foreign businesses were profitable.

Brief references to the testimony in the record emphasize the court's statement that Appellees had failed to make a full disclosure of the facts with reference to their respective businesses. Appellees do not show what their sales or profits were prior to 1920. Certainly the results of the more normal years of 1913 and 1914 should have been given the court. The keen competition on which Appellees so much rely as now existing, was admitted by their witnesses to have been the same for a large number of years.

Mr. Heinemann, testifying for petitioners (R. 537), said that this competition had continued since 1903. This Court judicially knows that the coming of the boll weevil in the cotton growing states has materially affected the consumption of fertilizer since 1920. Appellees fail to show any facts concerning this particular part of their respective businesses.

The record shows that Cudahy & Company does not engage in this character of business and that its profits are relatively higher than those of the Appellees.

Mr. Clithero, Assistant Comptroller of Armour by Exhibit 72, showed that in 1924 the profits on investments of Armour were 6.57% on sales totalling $875,000,000; while on sales for 1927 totalling $961,000,000, the profits were only .19% (R. 888A). This was true although the competitive element in both buying and selling was practically the same in the two years named. The witness also showed that Armour's sales were practically the same in 1925, 1927, and 1928, although the chain store development had taken place before these years.

Attention is called to the fact that by Appellees' Exhibits, Nos. 112 and 113, it appears that for the year 1920 Armour sold, in what is called the unrelated items, (R. 540), those included in the prohibitions of the injunction, to a value in ex-

cess of $34,000,000; while for the year 1924, the sale of these unrelated items totalled only $2,318,318 (R. 941). In the year in which the large sales of unrelated items occurred, Armour's profits were .89% while in the year in which the smaller sales occurred, the profits were 6.57% (see Exhibit 72, R. 888a). It is fair to infer that the sale of unrelated items now sought by Appellees, is not a profitable business and this inference is further supported by the experience of Cudahy & Company, which company does not engage in the sale of these items, and which company shows regularly much better earnings than those of Appellees.

The annual reports of Armour for the years 1926 and 1927 show that in the domestic market, the operations were on a "satisfactory basis," but that these domestic results were to some extent, offset by the results in the South American field and in the reports made, there was no separation of these different operations (R. 540).

It was admitted by the President of Armour that

> "for each year since 1925, except 1927, the exports were in excess of the average from 1910 to 1914. The dollar sales of Armour & Company for 1929 were larger than those for the six or seven preceding years."

None of the witnesses for Swift, Armour or Cudahy and none of the executive officers of those respective companies would if they could give any explanation of the widely varying profits of these companies.

The Court then proceeds to discuss the size of petitioners' businesses, cites the Steel Case, *United States v. United States Steel Corporation, 251 U. S. 417, 429*, and says (R. 1050):

> "The business of each (Appellees) is far less than that of its combined competitors. The great weight of the testimony is that no combination or agreement in restraint of trade exists between them."

After this statement, the Court finds "certain sporadic cases of unfair practices" were shown, briefly recited and found to be "substantially true," although "no worse than those of their competitors" and that there was "no evidence that the officials in the main offices of the defendants had any

knowledge of these practices but on the other hand they had forbidden any agreements or arrangements to fix prices" (R. 1051).

The Court then concedes that "it is not incumbent upon the government to establish the allegations of its original petition in the same way as if the case were being heard for the first time on its merits" (R. 1052), although we submit, it is a fair inference from the opinion that the Court acted on the assumption that the Government was expected to prove a case under the Anti-Trust laws.

The opinion then discusses the relation of Appellees to stockyards; shows how the Packers and Stockyards Act of 1921 is administered; says as a result of the use of peddler cars that the usee "either pays less freight for the shipment of his meat than he would otherwise do, or he is enabled to ship his other commodities almost without expense" (R. 1054); quotes the decision of the Interstate Commerce Commission in its 1921 opinion; describes the development of hard surface roads and the consequent increase in the use of trucks; and discusses a quick freezing process which will end one advantage now claimed to be enjoyed by the small packers and concludes (R. 1056):

> "While the Packers and Stockyards Act, the control of the terminal railroads by the Interstate Commerce Commission and the present wide spread and prompt dissemination of market news has, to a considerable extent, *diminished the danger* arising from the petitioners' ownership of these facilities, I think that it would be unwise to modify the Decree in these respects. There are many *opportunities for secret preferences* in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers. It is probable too that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the Decree." (Italics supplied).

Of the advantages of "reciprocal buying" which large shippers, including Appellees, obtain, it is said (R. 1057):

"I consider this *an element of danger* with opportunities for secret rebates and preferences, but the government admits that while this practice on the part of petitioners shows a tendency to unfair trade practices, it is not illegal and by no means confined to the petitioners."[20]

The basic principle of the decision is stated as follows (R. 1057):

"I do not think that in order to show a right to modify the injunction in any one respect, the changes in conditions which would justify such a modification should be limited to those bearing particularly upon that one question, but the entire change of conditions in the distribution of foods, those brought about by economic changes and practices, those brought about by the changes in the conditions and practices of the petitioners, and changes in the statutes and laws must be considered, and if by reason of those changes, any provision of the Decree can be modified without danger of monopoly, or the probability of acts in restraint of trade or unfair practices on the part of the petitioners, then the Decree should be modified."

The opinion then rediscusses stockyards, peddler cars, increase in the number of stores retailing both meats and vegetables, "combined food stores," finds "no danger of a monopoly * * * arising from the use of refrigerator cars" (peddler cars?) and finds that as to retailing, the decree should not be modified because "even if they (Appellees) should not go into the business of retailing, if they had the power to do so, there is a *real danger* of the *misuse* of that *power*" (R. 1058).

The conclusion of this argument is (R. 1059):

"The policy of Congress as shown by the statutes enacted by it and as interpreted by the Supreme Court is to preserve and stimulate competition, and to permit the defendants to engage in the retailing of their own products would, in my opinion, have the opposite result."

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[20]An examiner of the Interstate Commerce Commission has, in Docket 22455 on January 20, 1932, condemned this practice but the Commission has not as yet acted on his findings.

Although the Court found there is danger of the *misuse* of power in owing retailing establishments, the opinion concludes with this non sequitur (R. 1059):

> "The decree will therefore be modified so as to permit the defendant packers to manufacture, sell and deal in the commodities specified in paragraphs fourth and fifth of the Decree, and referred to in this case as unrelated lines, and to use or permit others to use the distribution facilities of the defendants in handling these unrelated lines, but in all other respects the Decree will remain in full force and effect, and the defendants required to comply promptly with the Decree, in every respect in which they have not heretofore complied with it."

It is respectfully submitted that the court below failed to apply the law of this case stated in *Swift & Company v. United States, 276 U. S. 311, 326,* as follows:

> "The argument ignores the fact that a suit for an injunction deals primarily, not with past violations, but with threatened future ones; and that an injunction may issue to prevent future wrong, although no right has yet been violated."

PROPOSITION.

3. NO SUCH MODIFICATION, WHATEVER THE JURISDICTION OF THE COURT, SHOULD BE GRANTED WHERE, AS HERE, THE PETITIONERS THEREFORE FAIL FULLY AND FAIRLY TO DISCLOSE ALL THE RELEVANT FACTS WITHIN THEIR KNOWLEDGE OR IN THEIR POWER TO PRODUCE.

Petitioners, Appellees, having consented to a decree fixing a particular method of conducting their businesses, should, when seeking to escape from the terms of that contract, fully and truthfully show all facts relevant to the claim that such decree should be substantially changed. This they did not do.

Appellees are engaged in many businesses; they have branches in foreign countries (R. 1036a) and they wholly failed to give details of such businesses and made no attempt to show whether their claims of inadequate earnings resulted from these businesses unaffected by the consent decree.

Appellees claim that conditions have changed since February 27, 1920, the date of the entry as a decree of the agreement made with the Attorney General. They failed to show all the conditions in respect of the matters included in the decree existing at or before that date. How can a court say what changes have occurred without full knowledge of what existed before it is claimed changes began?

Appellees, when pressed to say what they proposed to do if the relief they asked were granted, expressed themselves as not having decided what they would do.

Mr. F. Edson White, President of Armour, (R. 636) testified:

> "I have never felt in the situation as it now stands, that we could serve any purpose by making any definite plans."

Indeed, in the testimony of Mr. White (R. 634 to 636) and of Mr. Gustavus F. Swift, Vice President of Swift (R. 641), they were discussing the retail business, saying little about wholesaling. Mr. Swift said:

> "We have no plans with reference to the retailing of meats and groceries in case liberty is given us to do so by modification of the Consent Decree."

Armour and Swift, in 1929, did approximately the same volume of business.

Armour's net earnings from 1923 to 1929, inclusive, have been as follows:

	Amount	*Percentage on Net Worth*
1923	$15,691,000	5.26
1924	18,310,000	6.57
1925	14,452,000	5.04
1926	8,148,000	2.84
1927	538,000	.19
1928	11,326,000	4.09
1929	9,811,000	3.54

(Appellees' Ex. 111).

Earnings of Armour in its domestic business for the years 1926 and 1927 were very substantially in excess of those contained in the above statement but large losses were suffered by Armour in its South American business (Appellees' Ex. 126).

The Appellee Swift, owns 441 branch houses; owns 5,509 refrigerator cars and operates 1,014 car routes (Appellees' Ex. 143).

Swift owns a majority of the voting stock of Libby, McNeil & Libby, which company is engaged in the canning and distribution of fruits, vegetables, milk and other products (R. 642).

Swift's net earnings from 1922 to 1929, inclusive, have been as follows:

Year Ending	*Amount*	*Percentage on Net Worth*
Nov. 4, 1922	$13,049,217	6.1
Nov. 3, 1923	13,184,619	6.2
Nov. 1, 1924	14,125,988	6.6
Oct. 31, 1925	15,379,152	7.1
Nov. 6, 1926	15,645,242	7.1
Nov. 5, 1927	12,202,493	5.4
Nov. 3, 1928	14,813,182	6.6
Nov. 2, 1929	13,076,815	5.8

(Appellees Ex. 136).

The opinion of the court below (R. 1045) shows sales as follows:

	1920	*1929*
Swift	$1,052,039,000	$1,035,263,000
Armour	1,260,280,000	1,004,196,000

Asked for an explanation, Mr. Swift testified (R. 649):

> "I have no explanation to make of the wide difference of earnings between Swift & Company and Armour & Company. Our employees appear to number approximately 10,000 less than theirs. I think their compensation would average at least $1,000 a year, which alone would amount to a difference in cost of $10,000,000. Swift & Company has been paying dividends consecutively

ever since I can remember. Myself and five or six directors of Swift & Company are directors of Libby, McNeil & Libby, out of a total of 11, I think."

Cudahy & Company shows much better earnings than either Armour or Swift. What Mr. Cudahy, its Vice President, said is illuminating. He said (R. 689 to 690):

"Our operations are as broad, territorially, as those of Armour and Swift, but not as intensive, i. e., we have four branch houses in New York City, as against possibly 26 for Swift & Company. I think we sell more products per branch house than our competitors." * * *

"We formerly handled groceries and other socalled unrelated lines through our branch houses, but discontinued it in 1920 upon the entry of the Consent Decree and have not resumed it since. We have no plans as to what we might do in case the decree were modified, but I would say that we would not enter the grocery business." * * *

"Cudahy & Company do not own or operate fertilizer factories, nor tan hides, nor at this time manufacture soap. The price on hides is less now than in 1920. That is true also of tallow. We manufacture as many by-products as do Swift and Armour in the *meat* line. We do not manufacture as many inedible by-products as do Swift and Armour nor do we sell groceries through our distributing houses. Cudahy sells, as shown by the evidence in this case, about six times its capitalization, which is from 60 to 50 per cent higher than the percentage of Swift and Armour. I do not know any explanation for that other than that we utilize our facilities more extensively."

If this is the explanation, the consent decree which Cudahy and Company is not seeking to set aside, is needed by both Armour and Swift.

PROPOSITION.

4. NO MODIFICATION IS JUSTIFIED WHERE THE PETITIONERS THEREFOR ARE SHOWN TO BE GUILTY, THROUGH THEIR AGENTS ENGAGED IN THE PERFORMANCE OF THEIR BUSINESSES, OF VIOLATIONS OF THE ANTI-TRUST LAWS OF THE UNITED STATES AND OF THE CONSENT DECREE.

Mr. Justice Bailey found unfair and illegal practices by the agents of the Appellees (R. 1051), but he said:

> "It does not appear that the acts of Armour and of Swift were any worse than those of their competitors, nor that the final agreements were forced upon the others by Armour and Swift, but were for the benefit of all."

The fact that others may be guilty does not lessen the fact that the described acts were unlawful.

He further said (R. 1051):

> "That Wilson, Armour and Swift were working under an agreement in Oklahoma as to minimum prices to be obtained on fresh pork; that in certain territories salesmen of Armour, Swift, Wilson and other packers since the summer of 1929 received weekly confidential lists of identical minimum prices; that during the same time, Armour & Company induced the Vernon Meat Company, of Vernon, Texas, to join with them and others for the observance of minimum prices to their retail customers, the prices being furnished unsigned in a plain envelope, marked 'strictly private.' "

That the Court deduced from these facts that "there is no evidence that the officials in the main offices of the defendants had any knowledge of these practices, but on the other hand they had forbidden any agreements or arrangements to fix prices," does not show that there are not yet elements of danger. If the activities of Appellees are so broad in scope and so uncontrolled that their executives cannot prevent restraints of trade and commerce, the danger is even greater than if these officers knew what was being done by their thousands of employees.

This Court, in *Swift & Company v. United States, 276 U. S. 311, in Note 1, pages 319 and 320*, names violations of law by the packers, quotes the old case of *Swift & Company v. United States, 196 U. S. 375*, refers to a case in the District Court against Armour & Company, to the history of the packers contained in *Stafford v. Wallace, 258 U. S. 495*, to certain reports of Congress and to the report of the Federal Trade Commission on the meat packing industry. The facts so shown illustrate the character of the packers and establish that they have been law breakers throughout their existence.

We need not discuss in detail the evidence of the danger of monopoly, restraint of trade and unfair methods of competition which this record and the Court's opinion show exists, but it may be said that there is evidence of departures from published prices, of discrimination between buyers based solely on the extent of the competition in the several localities, of a scheme of reciprocal buying with railroads partaking of the nature of rebates; that coercion of, spying upon, and agreements on prices with competitors exist; that whether lawful or not advantages exist because of the use of peddler cars not equally open to grocers; a continuance of the purchase of competing businesses,[11] and purchases at high prices and sales at low prices not justified, and made to injure competitors.

The case of *United States v. United States Steel Corporation, 251 U. S. 417*, relied upon by Appellees, is unlike the instant case. In that case it was shown that the Steel Company did not secure freight rebates, did not obtain customers by secret rebates or departures from its published prices and that it made no difference between large and small competitors, and the decision of the District Court is quoted to the effect

[11] Note especially the competition between Armour and Morris, even after the merger of these competing concerns, and throughout the record where Morris branch houses were abandoned because Armour already had ample facilities in that territory and the facilities of Morris competed in the same market. See also the increase in the number of plants bought by Swift, such as Moultrie Packing Plant and those shown in the Western Meat case. Swift & Co. v. Fed. Trade Comm., 8 Fed. (2d) 595, 272 U. S. 554.

that the power of the Steel Corporation was not commensurate with its size. Again reference is made to the meaning of the word "integration," and the opinion of the District Court that "size had no accusing or excusing influence" was referred to. Summarizing this discussion, this Court said:

> "In other words, our consideration should be of not what the corporation had power to do or did but what it *has now power to do and is doing.*" (Emphasis supplied.)

Here the Appellees have power to restrain commerce and are doing so. The livestock growers (R. 477) feared the release of the Appellees from that part of their contract relating to stockyards and Mr. Justice Bailey said that while the Packers and Stockyards Act of 1921 had "diminished the danger:"

> "I think that it would be unwise to modify the Decree in these respects. There are many *opportunities for secret preferences* in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers. It is probable too that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the Decree."

PROPOSITION.

5. AS PETITIONERS HAVE RECEIVED ADVANTAGES AND OTHER PARTIES HAVE WAIVED RIGHTS BY THE CONTRACT-CONSENT-DECREE, PETITIONERS HAVE NO EQUITABLE RIGHT TO A MODIFICATION WHERE, AS HERE, IT IS IMPOSSIBLE TO RESTORE THE FORMER STATUS.

As shown above (p. 10), these Appellants abandoned remedies because of the consent decree, the United States abandoned threatened prosecutions and the civil remedies it contemplated pursuing. Appellees themselves relied on this decree as a defense to the complaints of these Appellants before the Interstate Commerce Commission.

Complaint was filed before the Interstate Commerce Commission and Appellees here intervened in the complaint and in their brief before the Commission, as shown above (pp. 8, 15), relied on the consent decree.

In giving effect to Appellees' contention, the Commission said:[22]

> "The record shows clearly that there is little if any dealing or shipment by the wholesale grocers in dressed poultry, butter and eggs. They (Appellees herein) assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

This ruling by the Commission recognized the plea set up in that case by these Appellees when they plead that the consent decree made impossible prejudicial action by the railroads in future which in the past had caused the complaint by the wholesale grocers.

Appellees also received as found by Mr. Justice Bailey advantages in the Packers and Stockyards Act of 1921.

The Act itself defines "packer" in such way as excludes the grocery business[23] and in sustaining the constitutionality of the statute the Supreme Court discusses the legislative history which shows that the Congress in passing the statute had in mind the Consent Decree.[24]

The Senators specifically said that the statute was "based on that Decree."[25]

On April 2, 1920, the Attorney General told a committee of the Congress the history, character and purposes of the decree.[26]

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[22] National Wholesale Grocers Asso., et al. v. Director General, 62 I. C. C. 375 and Appellees' Exhibits 165 and 166.
[23] Sec. 201 Act; 7 U. S. C. Sec. 191.
[24] Stafford v. Wallace, 258 U. S. 495.
[25] Cong. Record, Feb. 3, 1922, pp. 2342, 2343.
[26] Meat Packing Legislation. Hearings Before the Committee on Agriculture, House of Representatives, Sixty-sixth Cong. 2d Sess., April 3, 1920, pp. 2309 to 2357.

PROPOSITION.

6. WHERE PETITIONERS CONTINUE TO ENJOY, WHETHER LEGALLY OR NOT, ADVANTAGES IN THE TRANSPORTATION BY COMMON CARRIERS OF THEIR COMMODITIES NOT OPEN TO THEIR COMPETITORS, THERE IS DANGER OF MONOPOLY AND THE ORIGINAL CONTRACT OF SETTLEMENT MAY NOT BE CHANGED BY ANY COURT.

The court found that the use of peddler cars gave Appellees advantages (above p. 22).

A witness for Appellees (R. 674) showed how peddler cars may be used without additional cost in shipping groceries:

> "For instance, if we assume that the minimum is 10,000 pounds, and the rate is $1 a hundred, 8,000 pounds at that rate would come to $80, but we would still have to pay $100 to move it in that car. We could then, without paying any more money, put enough groceries or any other specific products up to 2,000 pounds in that car to raise the rate up to $100 without paying out any more total revenue on the car."

There are many tariffs relating to peddler cars with differing provisions—some more and others less advantageous to Appellees, but as some tariffs give special benefits and all give, as the court below found, general advantages, the existence of such special benefits and of advantages suitable only for use in transporting packing house products shows another element of danger and explains why the consent decree was and is necessary in the protection of fair methods of competition.

One of the reasons why the United States brought the original bill herein was the advantages given Appellees because they could and did use peddler cars. The report of the Federal Trade Commission, on which the Attorney General acted in bringing this complaint, at page 42,[11] said:

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[11] Report of The Federal Trade Commission on the Meat Packing Industry—Summary and Part I—June 24, 1919.

"This system of wholesale distribution through branch houses and peddler cars is the bulwark of monopoly. There is virtually no limit to the possible expansion of their wholesale merchandising short of the complete monopolization of the primary distribution of the Nation's food."

The finding is not here urged as evidence but as a historical statement showing the contentions which were settled by the consent decree. Nor is it material now whether of not such a finding shows unlawful preferences. The claim of preference and undue prejudice was presented and settled by the contract of adjustment. That the advantages described by the Federal Trade Commission should no longer continue was a reason for limiting the use of these peddler cars to their original purpose, that of hauling perishable meats and meat products for packers.

Equitably and fairly, the defendants in this case are estopped from seeking relief from their contract after they have received the benefits thereof. In effect, the contract has been executed on the side of the public and now, the public having fully paid the consideration, the defendants seek to evade their obligations to perform their part.

PROPOSITION.

7. A SHOWING OF CHANGES IN METHODS OF DOING BUSINESS FORESEEN OR FORESEEABLE AT THE TIME THE CONTRACT-DECREE WAS AGREED ON AND ENTERED FURNISHES NO JUSTIFICATION FOR ANY MATERIAL CHANGE IN THE CONTRACT.

Appellees' petitions are long and involved, but we believe all the claims thereof may be discussed under the following heads:

(A) Trucks; (B) Chain Stores; (C) Branded Goods; (D) Integration of Food Distributors; (E) Need for Further Utilization of Branch Houses; (F) The Livestock Grower; (G) Fruit and Vegetable Producers; (H) Dairy Products and

Produce; (I) Stock Yards; (J) Packers and Stockyards Act, 1921; (K) Changes in Court Decisions; (L) The Effect of The Consent Decree on Petitioners.

A. Trucks.

Unquestionably there has been since 1920, a large increase in the mileage of hard surfaced roads, with a consequent increase in the number of trucks operated thereover. It may be true that the petitioners do not have to the same extent advantages over wholesale grocers and others who distribute by truck as they had when they and their competitors all used railroad transportation. It may be that to the extent that all shippers use trucks, Appellees' peddler car advantages are lessened.

However this may be, the use of trucks by the petitioners is part of the plan followed by them and complained of in the original suit brought herein. In the petition of the United States herein, auto trucks are alleged as "a further development of the route-plan." It is also said therein that "these auto trucks reach and serve a total of 20,836 towns." Conditions then alleged to be unlawful have become intensified and petitioners now as then use trucks "as a supplement to their car routes."[11]

B. Chain Stores.

Much of this record relates to facts concerning chains of grocery stores, their large profits and the large increase in their numbers and the total sales by them. These facts do not justify the addition of Appellees to the already adequately occupied field of merchandising groceries, nor do they furnish any justification for the repudiation by Appellees of their contract of February 27, 1920.

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[11] (R. 23). Swift made no answer to this allegation as to "auto trucks" but said: "Small packers doing a local business" do not need route cars. (R. 35). On this point Armour said: "Motor trucks make possible the rendering of such service to many towns and places which are not reached or served by route cars or by branch houses," and the number of towns reached by trucks "is about 1,500."

Chain stores are not new. We learn from his autobiography that Benjamin Franklin some 200 years ago established a chain of printing shops throughout what was then British Colonies, later the original thirteen states; and The Great Atlantic & Pacific Tea Company is seventy-two years old and became a grocery chain in 1890 or 1891, extended in 1911 or 1912 when it entered the retail grocery field in a large way, and since 1912 there has been a continuous development of the business of this greatest of grocery chains. (R. 739ff). This chain does and must rely on the Big Four for its supply of meats. Its president, Mr. Hartford, frankly declared:

> "I do not think it would be possible to supply these stores with the grade of meats that we want from the small independent packers; if that is what you mean, sir. We have what we term at headquarters the Big Four. I do not believe, sir, we could supply our stores with the quality of meat, particularly in the eastern division which I am familiar with, because their office is right in our office at headquarters, without the big packers. I do not think the smaller men are in a position to give us the service or the quality.
>
> "I think I am correct, sir, in stating that in the eastern division, to make my point clear, about 90 per cent of our entire meat business is bought through the Big Four, or the large packers. It is convincing to me, sir, that due to the very large sales of meats in that division, we are getting better quality. I really think it would cause our company tremendous embarrassment—I do not know what we would do if we lost those channels. We can buy twenty carloads of meat from these men and we will get it in and it is proper and right to go out. That is, it would cause our company a considerable embarrassment, it seems to me, if we could not buy from them."

These facts undisputed and indisputable and which are supported by other cumulative evidence of record show that chain stores and large independent retail stores but furnish to Armour and Swift valuable customers who buy in great quantities. (See especially Record 746).

Mr. J. Frank Grimes showed that the voluntary chains are not and cannot be hurtful to the packers, but that the entry of the Big Four into retailing would be dangerous (R. 761 ff). The Court below therefore found against Appellees on this point.

C. Branded Goods.

Mr. Louis F. Swift, on January 9, 1930, in reporting to his stockholders, showed what he thought of brands. He said:[11]

> "*Years ago*, almost all dry groceries were sold in bulk, but the greater sanitation and convenience of the modern package has almost universally won the favor of consumers. In conformity with the trend of the times, Swift & Company for *many years* has been selling some of its meat products, such as bacon and lard, in convenient packages. The sale of these packaged products had *increased rapidly* and indications point to even more rapid growth in the future."

This claim of petitioners is evidently presented to fill in and to add to the number of claims without any addition to their quality.

D. Integration of Food Distributors.

As we understand this claim of Appellees with the conclusion sought to be deduced therefrom, it is that as others are further integrating their respective businesses, Appellees must extend their vertical trust in order to be in position successfully to compete with the new integrations. We submit that the conclusion does not logically follow.

It is true that there were organized from 1920 to 1929 large distributors of foods, and these generally in the past made satisfactory profits. Of the large integrators, General Foods is the most important and may with fairness to Appellees be taken as typical. It is also true that some retailers do some manufacturing, but this is a relatively small part of their re-

[11] Swift & Company Year Book, 1930, pp. 22, seq., Rec. 720, 1172.

spective businesses. Kroger is the most favorable example to Appellees of this class, and he has relatively slightly extended his manufacturing facilities since 1920.'

That integration may be extended too far is generally believed by students of political economy; and, it certainly is not proved in this case that integration is economic to the extent that the integrator should perform all the services of production and distribution, nor does the proof show the point where the maximum of efficiency is reached. The question, however, is economic and not legal.

If the facts justified, as we submit they do not, a finding, and the Court should find, that all or any stage of integration is economically advantageous, it would not follow that Appellees should further extend their power over the production, manufacture and distribution of food products. Nor does this record show that this integration has or likely will injure Appellees. Appellees have unduly magnified the extent that the integration has proceeded along vertical lines. It is true that many of these integrated food businesses slice bacon, boil hams, buy and put up under their own labels the products of others and do like acts generally referred to by the witnesses as "processing." They do not raise live stock, peaches or vegetables. Some of them do canning but by no means do even these thus obtain all their requirements. They are customers for packer and canner. The great food companies are largely mergers of pre-existing and smaller concerns, and are in part the result of a stock market with an appetite for all kinds of securities, but this appetite is fully satiated.

Armour, Cudahy and Swift are all alike subject to the Consent Decree and to the effect, if any, of the tendency towards integration, yet the returns of these companies vary widely. There is no differentiation as to these factors and therefore logically we must look elsewhere for an explanation of the different profits earned by these three packer-defendants. A few figures taken from Appellees' Exhibit 72 are enlightening. These figures show for the years 1920 to 1929 for these packers, their total sales and the per cent of returns on stockholders' investment:

	Swift		*Armour*		*Cudahy*	
	Sales in Millions	Profit %	Sales in Millions	Profit %	Sales in Millions	Profit %
1920	1,052	2.17	1,260	.19	288	1.76
1921	735	-3.37	842	-15.16	173	-5.08
1922	655	6.16	864	-3.40	160	4.20
1923	761	6.20	862	5.26	190	6.70
1924	785	6.60	875	6.57	203	10.86
1925	692	7.12	970	5.04	224	8.48
1926	953	7.13	808	3.41	231	10.70
1927	931	5.47	961	.19	233	5.91
1928	972	6.63	972	4.09	251	6.44
1929	1,035	5.76	1,004	3.54	267	6.26

(Exhibit Rec. 888a.)

In 1927, as this Exhibit also shows, Swift had a capital of $223,000,000; Armour of $286,000,000; and Cudahy of $40,000,000. The one with the least capital earned the highest, and the one with the largest capital, the lowest rate of return.

All the three sell in great quantities to large food dealers. Swift has earned 1922 to 1929, all after the depression of 1920 and 1921 had passed, an average of 6.38 per cent on stockholders' investment, added during the same time to his surplus and reserve over $16,000,000.[10]

Kroger has two packing plants; he had one in 1920, and does manufacture some meats, but he buys about five times as much as he slaughters.

E. Need of Further Utilization of Branch Houses.

This is an old claim and one definitely waived by the Consent Decree.[11]

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[10] Exhibit 72 and balance sheets shown in year books of Swift for 1923–1930.

[11] See the claims of Appellees before the Interstate Commerce Commission (above p. 9), and Exhibits 165 and 166.

Even if this were not already an adjudicated question, this record shows that Swift has increased the number of his branch houses since 1920 and that wholesale grocers and canners have a surplus of facilities. Why should Armour buy Morris' branch houses which competed with his and ask to violate his contract in order that he might increase their use? Why should Swift build more branch houses after agreeing not to sell groceries and then ask that he be absolved from his agreement in order fully to utilize his newly acquired branch houses?

F. The Live Stock Grower.

Several growers of live stock testified. Of these it may be said that generally they express a desire that the Appellees be *not* permitted to own stockyards, but permitted to retail meats; and, as to retailing groceries, some think that permission should be granted while others have no opinion on the subject.

Mr. Mollin (R. 477, 478) thought "unfair advantages" might be used by Appellees who "might tend to depress" the livestock market.

The court below having denied Appellees release from the injunction as to stockyards and as to the right to retail groceries or meats, in effect denied the contention of Appellees as to the stockyard interests and no cross appeal was taken.

G. Fruit and Vegetable Producers.

(1) General Statement.

The canning industry, like other industries, is suffering from overproduction, the result of an exhorbitant desire for expansion and volume. The industry, finding itself with more goods to sell than the consumer demands, is seeking a remedy; and in the vain attempt to evade the economic law of supply and demand, there is a grasping at straws and the expression of wishes supported not by logic but by desire. Among the remedies suggested is that of placing themselves in the hands of the Big Four with the hope that thereby people can be made to eat more peaches, peas, corn and beans; and that the

Big Four, by adding to their present volume, may save selling cost, and lower the price to consumers while raising it to grower. Wishes may father thoughts but they produce no reasons.

(2) Peach Canners.

Armour, through the form of loans and guarantees, is in the canning business and was prior to 1920, and these canners are in a situation similar to that of the growers.

(3) Vegetable Canners.

These are in somewhat similar situation to the peach-canner, but some of them at least have a better knowledge of their needs, the causes of their situation and the remedy therefor. Royal F. Clark, a large canner and ex-president of the National Canners Association, in his testimony evidenced a sound judgment and showed that he had given intelligent consideration to the problem (R. 793 ff). If the fallacy of the Appellees' claims that the canner will be helped by them is not obvious, the reading of Mr. Clark's testimony will convince that it is a fallacy and an unsound economic opinion.

H. Dairy Products And Produce.

Mr. Bird at great length described the dairy and produce business of Swift and detailed some of the plants purchased since 1920.[11]

Because of the opinion of the Court, it was not deemed by counsel necessary to insert testimony on the various and questionable activities of Appellees in the dairy part of their businesses, but it is submitted, that there are yet threats and circumstances of danger that would make it unsafe to the public to surrender the decree to which Appellees agreed to adjust their businesses.

I. Stockyards.

We do not think the danger of packer-control over stockyards can be better presented than it was presented by Ap-

[11] Increase of plants, R. 543; sells a greater percentage of eggs, butter and cheese now than in 1920, Exhibits 138, 139, 141.

pellees' witnesses. One of these, F. E. Mollin, Secretary, American National Livestock Association, has explained the situation. (R. 477).

Other livestock growers expressed similar apprehensions.

The Appellees, through stock holdings and otherwise, still have some interest in stockyards and stockyard banks.

J. Packers And Stockyards Act, 1921.

No testimony was presented with reference to this claim; but, of course, the Court has judicial knowledge of the statutes and of legislative history in connection therewith. As the Court did not modify the decree with reference to stockyards, this issue was decided against Appellees.

K. Changes in Court Decisions.

The petitions claim that Supreme Court decisions have changed the law since 1920. Decisions of Courts do not change law, they announce law. See also above, p. 29.

L. The Effect Of The Consent Decree On Appellees.

It is submitted that when Appellees made the contract of February 27, 1920, and agreed that it might become the decree of the Court, they are presumed to have known that the decree would affect their methods of doing business, restraining their wills as stated in their agreement. It therefore seems immaterial here to determine whether or not that agreement restrained or injured Appellees.

It will also be recalled that Mr. Justice Bailey found that Appellees did not give full and frank testimony with reference to this claim. Appellees did not show what their earnings were in normal times prior to 1920.

Such glimpses as Appellees give us do not in this respect show any adverse conditions since 1920, excepting of course the period of declining inventories from which all industry likewise suffered. The Swift year books in evidence[33] give us some light. Brief statements from these are:

---

[33] These may be referred to Rec. 720 and 1172.

For 1921: "The packing business is in as favorable a condition as it has been at any period during normal times, and the prospects are good."

For 1924: "I am glad to report that Swift & Company has had a satisfactory year. We are on a fairly normal basis of operations, judging by prewar standards."

For 1925: "I am glad to express the opinion that the company is now in a *better position and has better prospects than ever before.*"

For 1926: "Our sales for 1925 exceeded $875,000,000, the largest of any year since the war period which was, of course, abnormal."

For 1927: "I have unlimited faith in the future of Swift & Company. Having seen it grow from practically nothing to its present size, I firmly believe that the principle upon which it is established and has developed will continue to make it a success."

For 1929: "Swift & Company stock is essentially an investment rather than a speculative stock. It has now paid dividends regularly for forty-four years," and for 1920 to 1929 inclusive at the rate of eight per cent.

If Armour does not do as well and Cudahy does better, the Consent Decree is not the explanation as all three are parties thereto.

The Big Four had earnings in 1927 better than those of other Federally inspected packers. The Government's Exhibits 7 to 12 show earnings of all packers. Exhibit 9 is the worst showing for the independent packers but the worst showing of these is evidence of what the Big Four can do. This exhibit shows that for the year 1927 the Big Four packers earned net profits of $16,299,602.81; that of the 187 Federally inspected slaughterers other than the Big Four, there was a net loss of $515,716.20. As these two classes are under the same inspection, this comparison shows that the Big Four were in this year relatively in better shape than their competitors. The profits of the Big Four and of the other Federally inspected slaughterers vary widely. For 1929 (Exhibit 7)

the first of these had net profits of $27,945,776.65, while 211 Federally inspected slaughterers had net profits of $8,050,-667.72.

Swift has increased the number of his branch houses and has purchased other packing plants and creameries. That he may own less refrigerator cars than formerly is the result as was alleged in the original petition of the United States because of a shift to motor trucks.

Swift's sales have increased each successive year, except 1925, since the year 1922. Armour's sales were $140,000,000 higher in 1929 than in 1922 although the upward progress was not regular. What the sales were in the normal years prior to 1920, say 1913 and 1914, Appellees do not show.

CONCLUSION.

Mr. Justice Bailey found sources of danger from the past and present practices of Appellees; and, it is submitted, that this court need not look beyond his opinion to find ample reasons for requiring Appellees to keep their contract.

The learned trial Judge kept the injunction as to "stockyards, terminal railroads and market newspapers" and (R. 1057) said:

> "If the injunction as to these matters remains *unchanged* they cannot be made the basis of monopoly."

He also found (R. 1056) a diminished danger from the ownership of these, but said:

> "I think that it would be unwise to modify the Decree in these respects. There are many opportunities for secret preferences in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers. It is probable too that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the Decree."

He said the use of peddler cars "is sound as an economie and business proposition" (R. 1058). If this is true, it was true in 1920 and Appellees agreed to limit such use to meats and meat products.

He said, "there has been a great increase in the number of combination food stores, those retailing both meats and groceries" (R. 1058). But he found that it was contrary to the policy of Congress (R. 1059):

> "to permit the defendants to engage in the retailing of their own products."

He further said (R. 1058):

> "The control by the defendants of the great amount of interstate commerce in meats and other articles from the producer to the consumer would probably result in the almost complete annihilation of the independent retail grocer, already a minority in volume of business. * * * there is a real danger of the misuse of that power."

While the learned trial Judge found a "diminished danger" of "reciprocal buying," he said (R. 1057):

> "I consider this an element of danger with opportunities for secret rebates and preferences, but the government admits that while this practice on the part of petitioners shows a tendency to unfair trade practices, it is not illegal and by no means confined to the petitioners."

From the undisputed facts and from the conclusions in the opinion of the trial Judge, it is submitted that the contract of Appellees should be kept and the original decree enforced according to that agreement.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 568

UNITED STATES OF AMERICA, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., Appellants,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

REPLY BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS IN NO. 569.

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SUPREME COURT OF THE UNITED STATES

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NO. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., Appellants,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

REPLY BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS NO. 569.

Appellants in Docket 569 in reply to the brief of Appellees submit this memorandum.

ERROR IN APPELLEES' BRIEF.

At page 8 of their brief Appellees say:

> "* * * interveners did not call a single witness, or even prove that any member of either of their organizations has an existing business that will be affected in any way by modification of the decree."

A similar statement appears at the bottom of page 42 of Appellees' brief.

The facts are that J. M. Radford Grocery Company is an intervener (R. 175) and that it was stipulated that J. M. Radford of that company, among other wholesale grocers would testify:

> "* * * in substance, that in their opinion their business and their industry and that of their retail customers would be seriously endangered and injured if the petitioning defendants, Swift and Armour, were permitted to reenter and to engage in the manufacture or packing of or were permitted to sell or handle or use their distributive facilities in the handling of the grocery commodities now prohibited to them by the terms of the said Decree of February 27, 1920:" (R. 722.)

With this stipulation it was useless to call any witness to show that Interveners have "an existing business that will be affected in any way by modification of the decree."

Appellees Claim That Consent of the Government Gave Power to Modify the Final Decree.

In our original brief it was contended that the District Court had no jurisdiction to modify the decree of 1920. Appellees (Brief 34 ff.) urge that Interveners, in view of the action of the Government in this respect, have no right to make such contention.

We submit that the jurisdiction of the Court below is involved. Compare Realty Acceptance Corp. v. Montgomery, decided February 15, 1932, L.Ed. Ad. Pamphlet 315.

In United States v. Mayer, 235 U. S. 55, 70, this Court, citing cases, said:

> "As the district court was without power to entertain the application, the consent of the United States attorney was unavailing. * * * * * In a Federal court of competent jurisdiction, final judgment of conviction had been entered and sentence had been imposed. The judgment was subject to review in the appellate court, but, so far as the trial court was concerned, it was a finality; the subsequent proceeding was, in effect, a new proceeding, which by reason of its character, invoked an authority not possessed. In these circumstances it would seem to be clear that the consent of the prosecuting officer could not alter the case; he was not a dispensing power to give or withhold jurisdiction. The established rule embodies the policy of the law that litigation be finally terminated, and when the matter is thus placed beyond the discretion of the court, it is not confided to the discretion of the prosecutor."

Respectfully submitted,

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FEB 8

CHARLES ELMO

IN THE

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No. 568

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No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY, *et al.*

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY, *et al.*

BRIEF OF INTERVENER-APPELLANT NATIONAL WHOLESALE GROCERS ASSOCIATION.

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February 8, 1932.

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Supreme Court of the United States

OCTOBER TERM, 1931.

No. 570.

NATIONAL WHOLESALE GROCERS' ASSOCIATION,
Appellant,

against

SWIFT & COMPANY, *et al.*,
Respondents.

BRIEF IN BEHALF OF INTERVENER-APPELLANT NATIONAL WHOLESALE GROCERS' ASSOCIATION.

Statement.

On February 27, 1920, a decree was entered in the Supreme Court of the District of Columbia in an equity suit brought by the United States Government under the anti-trust laws against the so-called "Big Five Packers" (R. 153).

Nearly five years thereafter two of the defendants, Swift & Company and Armour & Company, filed motions to vacate the decree as invalid and on March 19, 1928 this Court in *Swift & Company* vs. *United States*, 276 U. S. 311, held that the decree was in all respects valid.

On April 16, 1929 the decree again came before this Court on a writ of certiorari to determine the correctness of the decision of the court below in suspending operation

of the decree. This court, on May 20, 1929, in *United States v. California Cooperative Canneries*, 279 U. S. 553, held such suspension improper and reversed the decree below, stating at page 559:

> "When our opinion in the *Swift* case settled that by reason of the Expediting Act the Court of Appeals was without jurisdiction of an appeal in a suit in equity under the Anti-Trust Act in which the United States is the complainant and that the consent decree is valid, *all obstacles to the enforcement of the consent decree should have been promptly removed.* In refusing to vacate its judgment and mandate the Court of Appeals departed from the limits of admissible discretion." (Italics ours.)

Obstacles again have been interposed. On January 31, 1931, upon the petitions of the Swift and Armour defendants *and without the consent of the Government*, the Supreme Court of the District of Columbia entered the decree now appealed from (R. 1060, 1062). This decree modifies the original consent decree so as to permit the defendants to manufacture, sell and distribute, and use their distributive facilities for the sale and distribution, *at wholesale*, of the commodities specified in paragraphs Fourth and Fifth of said consent decree (R. 1060-2).

The Consent Decree of February 27, 1920 was entered *upon the written consents* of one hundred thirty-five (135) defendants representing five (5) groups of packers, Swift, Armour, Cudahy, Wilson and Morris.

The events leading up to the entry of that decree are for the most part recorded in the documents marshalled by this Court in its opinion in *Swift & Co. v. United States*, 276 U. S. 311, at page 319, and for convenience are summarized in an appendix to this brief (*post*, p. 51).

By an order of the Supreme Court of the District of Columbia, entered November 5, 1921 (R. 188), this appellant was granted leave to intervene for the purpose and to the extent of being heard

> "in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree" (R. 188).

Since the entry of said order this appellant has actively supported the Government in resisting the various efforts of the Packers to evade and nullify the consent decree during the twelve years that have elapsed since its entry. A brief résumé of those efforts is given in Point II (*post*, p. 16).

The modification of the original decree deprives this appellant of all the protection secured to it by said decree. From the order providing for such modification this intervener has been allowed an appeal (R. 1137). It is well established that one who has been so permitted to intervene for the protection of his own interests is entitled to appeal from a decree adverse thereto.

> *Ex parte* Jordan, 94 U. S. 248;
> Williams *v.* Morgan, 111 U. S. 684;
> Continental Ins. Co. *v.* United States, *et al.*, 259 U. S. 156;
> *In re* Michigan Cent. R. Co., 124 Fed. 727 (C. C. A., 6th Circ.);
> Hamlin *v.* Toledo, etc. R. Co., 78 Fed. 664 (C. C. A., 6th Circ.).

In *U. S.* v. *California Cooperative Canneries*, 279 U. S. 553, 559, this Court said:

> "In suits in equity brought by the United States under the Anti-Trust Act, an appeal by one who was permitted to intervene, like an appeal by one of the original parties, must be taken direct to this court."

It is not the purpose of this brief to duplicate the arguments of the Government or to summarize all of the evidence presented below. We shall confine ourselves to the following four points (the first two of which are not advanced in the Government's brief) and in each of them shall consider such of the facts only as are necessary to its development:

1. The consent decree being an agreement of the parties and not an adjudication by the court, the court below had no power to modify it without the consent of the Government, which was expressly withheld.

2. Swift and Armour, because of their unconscionable and contumacious conduct with respect to the consent decree, have no standing to obtain relief from a court of equity against the restraints of that decree.

3. The considerations presented by the bulk of the evidence are for Congress and not for the courts, viz.: (1) that Swift and Armour are actuated by good intentions; (2) that modification will benefit the public and relieve petitioners of alleged inconvenience and hardship, and (3) that the existing anti-trust laws are unwise.

4. The petitioners failed to sustain their burden of showing that conditions had so changed since the entry of the consent decree as to justify the modification made by the court below and that, if given the right to engage in the manufacture and wholesaling of groceries, they would not constitute a renewed threat of "the long feared monopoly in meat and other food products", to prevent which the consent decree was entered under the anti-trust laws.

Specification of Errors.

We specify and urge all of the errors assigned by this appellant. These are set forth in full on pages 1122 to 1125 of the record.

We particularly urge:

(a) "The Supreme Court of the District of Columbia erred in making and entering the decree herein of January 31, 1931, modifying the consent decree entered in this cause on the 27th day of February, 1920."

(b) "The Court erred in modifying said consent decree without the consent of the United States of America and of all the parties to said decree."

(c) "The Court erred in not dismissing the amended petitions of the defendants herein for lack of equity, and particularly by reason of the failure of the petitioning defendants to comply with the said consent decree and their efforts from the time of its entry, February 27, 1920, to evade or defeat it."

(d) "The Court erred in not finding and deciding that there is danger of monopoly and of restraint of interstate trade and commerce by and on the part of the defendants."

(e) "The Court erred in deciding that the testimony or other evidence in this case showed such changes in conditions since the entry of said consent decree of 1920 as to justify the modification thereof." (R. 1123.)

ARGUMENT.

I.

The Consent Decree was not an adjudication by the Court but a contract between the Government and the Packers, and the Court had no power to modify the contract in any material respect without the consent of the Government. That consent having been expressly withheld, the refusal to dismiss the petitions was error.

This point was preserved in the court below both by motion to dismiss the amended petitions (R. 315, 316, 382) and by objections to the admission of evidence (R. 383, 384-6), and the rulings of the court thereon are duly assigned as error (R. 1123).

The Government expressly refused to consent to any modification of the consent decree. The Attorney-General, in his letter to the Senate dated July 11, 1930, said (italics ours):

> "With respect to the attitude of this Department toward the petitions of Armour & Company and Swift & Company for modification of the consent decree, *I have declined to entertain any suggestion that I stipulate for any modification of this decree* * * *" (R. 387-8).

The court below found that it had "inherent power" to modify the consent decree "in such respects as the Court find justified in the public interest and in justice to the defendants" (Conclusion of Law, No. 3; R. 1114); and that "The consent of the United States and all other original parties who consented to the entry of said Decree is not necessary to the exercise of the Court's aforementioned power to modify" (Conclusion of Law, No. 4; R. 1114). It

is also found that Paragraph Eighteenth of the Consent Decree reserved to the court power to make such modification (Conclusion of Law, No. 2; R. 1114) and that said paragraph constituted "consent by all of the parties that the Court may entertain at any time any application for modification of the Decree and enter its order thereon" (Conclusion of Law, No. 5; R. 1114).

With the greatest deference to the court below, we submit that no support for his view is found in the decided cases. On the contrary, the authorities always and everywhere have held that a consent decree is not an adjudication but is a contract of the parties, and must be construed as a contract.

Lawrence Mfg. Co. *v.* Janesville Cotton Mills, 138 U. S. 552, 562;

Hodgson *v.* Vroom, 266 Fed. 267, 268 (C. C. A., 2d Circ.);

Wilson *v.* Haber Bros., 275 Fed. 346 (C. C. A., 2d Circ.);

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Hohenadel *v.* Steele, 237 Ill. 229, 234;

Karnes *v.* Black, 185 Ky. 410, 414;

New York Cent., etc., R. Co. *v.* T. Stuart & Son Co., 260 Mass. 242, 248;

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Ellis *v.* Ellis, 193 N. C. 216;

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Barnes *v.* Amer. Fertilizer Co., 144 Va. 692, 720;
2 Street, Fed. Eq. Pr., Sec. 1957;
Gibson, Suits in Chancery, Sec. 577;
5 Enc. of Pl. & Pr. 961-2;
21 Corpus Juris 815.

"The prior decree was the consequence of the consent and not of the judgment of the court."

Lawrence Mfg. Co. *v.* Janesville Cotton Mills, 138 U. S. 552, 562.

In *Hodgson* v. *Vroom,* 266 Fed. 267, 268, the Circuit Court of Appeals, Second Circuit, said *per* Hough, J.:

"The distinction between a decree in common form and a consent decree is the difference between a consent to submit a case to the court for decision and a consent as to what the decision shall be. When there is a consent as to what the decision shall be, the decree is 'a mere agreement of the parties under the sanction of the court, and is to be interpreted as an agreement'."

In *United States* v. *Irwin,* 127 U. S. 125, 129, the Court, in construing the phrase, "for adjudication according to law", said (italics ours):

"The force of this phrase cannot be satisfied by anything less than a formal, regular and final judgment of the judicial tribunal to which the matter is

submitted, *acting upon the acknowledged principles of law applicable to the circumstances of the case.*"

In *People* v. *Sohmer,* 207 N. Y. 450, 459, the court said:

"An adjudication involves the exercise of judicial power through a hearing upon an issue, the receiving and weighing of evidence and the act of rendering judgment."

It is also held with equal unanimity that, in the absence of a provision in the consent decree giving the court discretionary power to modify it, the court has no power to grant any material modification except upon the consent of all the parties who made the agreement which is embodied in the consent decree.

City of Des Moines *v.* Des Moines Water Co., 218 Fed. 939, 943; affirmed 230 Fed. 570;
Karnes *v.* Black, 185 Ky. 410, 414-5;
Horning *v.* Saginaw Circ. Judge, 161 Mich. 413;
Lentz *v.* Lentz, 194 N. C. 673;
First Nat. Bank *v.* Mitchell, 191 N. C. 190, 193;
Bank of Glade Spring *v.* McEwen, 160 N. C. 414;
Edney *v.* Edney, 81 N. C. 1;
Stites *v.* McGee, 37 Oreg. 574;
Outlaw *v.* Barnes, 118 S. C. 189;
Morris *v.* Peyton, 29 W. Va. 201;
Seiler *v.* Union Mfg. Co., 50 W. Va. 208;
McGraw *v.* Traders Nat. Bank, 64 W. Va. 509;
2 Street Fed. Eq. Prac., Sec. 2082;
Gibson, Suits in Chancery, Sec. 577;
2 Beach, Mod. Eq. Prac., Sec. 795;
5 Enc. of Pl. & Pr. 961;
12 Corpus Juris 520.

"The agreements of the parties were reciprocal, and each was the consideration for the other. *If you take out what hurts the said defendants, what is left is not what was agreed to.*" (Italics ours.)

Bank of Glade Spring *v.* McEwen, *supra.*

"A decree by consent as such must stand and operate as an entirety or be vacated altogether, unless the parties by a like consent shall agree upon and incorporate into it an alteration or modification. *If a clause be stricken out against the will of a party, then it is no longer a consent decree, nor is it a decree of the court, for the court never made it.*" (Italics ours.)

Edney *v.* Edney, *supra.*

It would seem quite plain, therefore, that the court below lacked power to modify the Consent Decree without the contemporaneous consent of the Government, unless such power was conferred upon it in advance by the final clause of the decree, reserving jurisdiction for certain purposes. Even if that decree had been an adjudication by the court, made after protracted litigation, the court would have had no power eleven years later, and after the decree had been held by this Court to be valid and binding (*Swift & Co.* v. *United States*, 276 U. S. 311), to modify it drastically upon petition, unless such power had been expressly reserved in the decree.

Bronson *v.* Schulten, 104 U. S. 410, 415.

Nor would it help in the present case to regard the petitions of the defendants as bills of review, because a bill of review does not lie to review a consent decree except for fraud, mistake or lack of formal consent. "It is a general rule that against such a decree a bill of review will not lie."

Thompson *v.* Maxwell, 95 U. S. 391, 397.

See also—

Swift & Co. *v.* United States, 276 U. S. 311, 324.

The power to modify without the consent of the Government, if it exists at all, must be found in the "Eighteenth" clause of the Consent Decree which provides (R. 167):

> "That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

That provision, it will be observed, retains jurisdiction for two specified purposes:

1. For taking such action "as may become necessary or appropriate for the *carrying out and enforcement*" of the decree.

2. For "entertaining" applications which "*the parties*" may make with respect to the decree.

By no stretch of the imagination can the modification of the Consent Decree made by the court below be regarded as "necessary or appropriate for the carrying out and enforcement" of that decree.

Eureka Fire Hose Co. *v.* Eureka Rubber Mfg. Co., 72 N. J. Eq. 555;
Stout *v.* Stout, 104 Va. 480.

In *City of Des Moines* v. *Des Moines Water Co.*, 218 Fed. 939 (affirmed 230 Fed. 570), the court, speaking of the power to modify a consent decree, said at page 943:

> "While the court, upon application of either party, may give such further directions as shall become necessary for the purpose of carrying such order or decree into effect according to its spirit and intent, the variation of such an essential element as the time of payment would not fall within such a legitimate exercise of discretion, but would amount to a material alteration of the unambiguous terms of the agreement."

The petitions of the Packers were undoubtedly applications "with respect to this decree", but were they made by "the parties" within the contemplation of the reservation?

The Consent Decree was drafted by men learned in the law who were undoubtedly familiar with the principles governing consent decrees, and they must have known that such a decree may be modified only with the consent of *all* the parties. Therefore, it is a fair inference, that they intended the words "the parties" to bear their natural and ordinary meaning, namely, "all the parties" or certainly all of the parties to be affected by the modification and particularly the United States itself.

The original decree was a bargain between the Attorney-General and the defendants. Obviously a radical modification of that agreement can be made only by those who made the original and not by the Court over the objection of one of the parties, to wit, the United States.

Wherever the definite article "the" is used before a plural or collective noun, its natural significance is "all the" unless a different meaning is indicated by the context. Thus, the words "the property" in an insurance policy

have been held to mean "all the property" (*Born* v. *Home Ins. Co.*, 110 Ia. 379, 383), and a reference to "the evidence in the case" in an instruction has been held to mean "all the evidence" (*Guice* v. *State*, 60 Miss. 714, 726).

But even if it were conceded that "the parties" in the reservation meant "any of the parties" and that the court was thereby empowered to "entertain" at any time an application for modification of the decree by any party thereto, it would by no means follow that the court was thereby authorized to *grant* the requested modification without the consent of the other parties. Such consent being a legal requirement, the only way the court could properly exercise its jurisdiction would be by *dismissing the petition*, unless

1. All the parties at that time consented to the proposed modification, or

2. The language of the reservation could fairly be construed as a consent in advance by all the parties to any modification which the court, in its discretion, might see fit to make upon the application of any party.

It is plain that there was no contemporaneous consent by all the parties because, as already shown, the Government expressly refused its consent.

It would seem equally plain that the language of the reservation cannot fairly be construed as a consent by all parties in advance to any modification that the court might deem proper. In this connection it must be borne in mind that the reservation, if so construed, would cut both ways. If it authorized the court, without the consent of the Government, to emasculate the Consent Decree upon the application of the packers, so also it would enable the court, upon the application of the Government to impose upon

the defendants, without their consent, a far more onerous contract than that to which they had agreed.

It is evident that the court below considered it would have had the power, if the government had so requested, to modify the decree by imposing *additional restrictions* upon the packers over their objection. Referring to the practice by which a shipper uses that railroad which buys his products, the court said: "I consider this an element of danger with opportunities for secret rebates and preferences", although not illegal. The court added: "The government does not seek any *additional injunction* in this respect." (Italics ours.) (R. 1057.)

In the court below counsel for the packers cited the following cases as authority for their contention that the court had power to modify the consent decree without the Government's consent:

U. S. *v.* Discher, 255 Fed. 719 (D. C., S. D., N. Y.);

U. S. *v.* Dupont De Nemours & Co., 273 Fed. 869 (D. C. Del.);

U. S. *v.* N. Y., N. H. & H. R. Co. (opinion not reported);

American Press Assoc. *v.* U. S., 245 Fed. 91 (C. C. A., 7th Circ.).

In *U. S.* v. *Discher, supra,* it was pointed out on page 720 that:

> "*The decree provided* that the court retain jurisdiction to enable the parties to apply for modification of it, if it be thereafter shown *that the provisions have become inadequate to maintain competition or have become unduly oppressive to the defendants:*" (Italics ours.)

In *U. S.* v. *Dupont De Nemours & Co., supra,* at page 873, the court said:

> "The modification proposed does not call for revision of the decree on the merits, or against any person concluded thereby. The matter now before the court involves only a modification of the decree as it affects a party not sued but created and brought into the decree merely as an instrument to carry out its purpose."

In *U. S.* v. *N. Y. N. H. & H. R. Co., supra,* the decree contained an express reservation giving the right to "any party", upon reasonable notice to the other parties, to apply for "any order or modification as herein provided for." The court said:

> "Present necessities and revolutionary changes in transportation have created the emergency which *was wisely provided for in paragraph 14 of the decree.*" (Italics ours.)

In *American Press Assoc.* v. *U. S., supra,* there was no discussion whatever of the power of the court to modify without unanimous consent and no indication that the question was raised in any way. Under such circumstances the case cannot be regarded as an authority.

U. S. *v.* More, 3 Cranch 159, 172;
New *v.* Oklahoma, 195 U. S. 252, 256;
Tefft, Weller & Co. *v.* Munsuri, 222 U. S. 114, 119;
Webster *v.* Fall, 266 U. S. 507, 511.

In *U. S.* v. *More, supra,* it having been shown that the court had previously exercised jurisdiction in a similar case, Chief Justice Marshall said:

> "No question was made in that case as to the jurisdiction. It passed *sub silentio,* and the Court does not consider itself as bound by that decision."

In *Webster* v. *Fall, supra,* this Court said:

> "The most that can be said is that the point was in the cases if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."

We have been able to find no case (except the present one), and believe that none exists, in which it has been directly *held* that the court by which a consent decree has been entered possesses inherent power to modify it in any substantial respect without the consent of all the parties.

II.

Petitioners were foreclosed by their unconscionable and contumacious conduct with respect to the Consent Decree from asking a court of equity to relieve them of the obligations which they assumed when they signed that decree.

> "He that hath committed iniquity shall not have equity."
>
> Railroad Co. *v.* Soutter, 13 Wall. (U. S.) 517, 523.

> "* * * the case is presented of an effort on the part of defendant to avoid or delay the payment of a just debt. Of course, it need not be said that under such circumstances a court of equity will not strain a point to assist a defendant."

Sheffield-Furnace Co. *v.* Witherow, 149 U. S. 574, 577.

"A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity."

Deweese *v.* Reinhard, 165 U. S. 386, 390.

"Courts of equity frequently decline to interfere on behalf of a complainant whose attitude is unconscientious in respect of the matter concerning which it seeks relief."

National F. Ins. Co. *v.* Thompson, 281 U. S. 331, 338.

The consent decree of February 27, 1920, was both a mandate of the court ordering and decreeing that the defendants be "enjoined and restrained", and that they "divest themselves" of certain lines of business, and also, in fact and in law a contract by the defendants, whereby, for value received, they *agreed* to refrain from doing certain things and to divest themselves of certain things.

The considerations for that agreement, received and fully enjoyed by the packers, were valuable and, as they well know, cannot *now* be taken from them. Pending action of the Department of Justice, both criminal and civil, was ended (Swift Yearbook 1921, pp. 51, 13; Hearings Senate Com. on Agriculture and Forestry, 66th Cong., 2nd Session—S. 2199, S. 2202—Part 4, p. 47). Moreover, the Packers and Stockyards Act, 1921, while under consideration in Congress, was amended favorably to these defendants for the reason, which is stated in the Congressional

Record, that the consent decree of February 27, 1920, was regarded as a permanent fact (Cong. Rec., Aug. 2, 1921, pp. 4896-8; Statement of the Chairman of the Senate Committee on Agriculture and Forestry, Cong. Rec., Feb. 3, 1922).

On January 17, 1930, Senator Norris said on the floor of the Senate (Cong. Rec., Jan. 17, 1930, p. 1848):

> "* * * when we consider the origin of this decree, in which the Congress of the United States is directly interested, because it would have legislated, without any doubt, had this decree not been entered into, and the decree was entered into for the purpose of preventing legislation by Congress, with the object, I think, of having it all set aside as soon as Congress adjourned."

The court below, in refusing to modify certain parts of the decree, said:

> "* * * I think that it would be unwise to modify the Decree in these respects. There are many opportunities for secret preferences in the operation of the stockyards and of the terminals, and much for propaganda and distortion of news in newspapers. *It is probable too that Congress would have made the provisions of the Packers and Stockyards Act even more stringent had it not been for the Decree.*" (Italics ours.) (R. 1056.)

Furthermore, the Interstate Commerce Commission, in deciding the private car case in favor of these packers, regarded the consent decree as a permanent fact (62 I. C. C. Rep. 375).

After receiving and enjoying those benefits from the consent decree, the packers almost immediately began their efforts to escape from its burdens. In 1921, disguised as

the California Cooperative Canneries, which was then and is now mortgaged to and financed by Armour & Co. (R. 715, 712), they applied to the Attorney-General for a modification of the consent decree. The Attorney-General referred the matter to an Interdepartmental Committee, composed of representatives of the Departments of Justice, Agriculture and Commerce, for advice. That Committee held extensive hearings, examined a great number of witnesses and considered much documentary evidence. Its recommendations, which were adopted by the Attorney-General, were that the Attorney-General should not act upon the request of the California Cooperative Canneries and that any application for modification should be made to the court which entered the decree (Hearings pursuant to Senate Resolution 211—Senate Committee on Agriculture and Forestry, 67th Congress—2nd Session—March-April, 1922).

On April 19, 1922, California Cooperative Canneries filed its petition in the Supreme Court of the District of Columbia for leave to intervene *for the purpose of having the decree vacated.* This petition was denied on May 8, 1923. Upon appeal to the Court of Appeals of the District of Columbia, the Armour and Swift defendants for the first time *openly* attacked the consent decree when they appeared in the Court of Appeals and claimed that the decree was invalid. The Court of Appeals held that these defendants were in no position to assail the validity of the decree as they had not raised any such question in the court below, but reversed the order denying intervention to the California Cooperative Canneries and directed that such intervention be allowed and that such further proceedings be had upon its petition as might be necessary to determine the issues raised thereby (*California Cooperative Canneries* v. *United States,* 299 Fed. 908).

On November 5, 1924, the defendants Swift & Company and Armour & Company filed in the Supreme Court of the District of Columbia motions to vacate the consent decree and a similar motion was made by California Cooperative Canneries on December 26, 1924. These motions were argued together and resulted in an order, dated May 1, 1925, whereby the motions of the Swift and Armour defendants were overruled and the motion of California Cooperative Canneries was granted to the extent that the consent decree was *suspended as a whole until further order of the court made after a full hearing on the merits.* That decision has been twice reviewed by this Court (276 U. S. 311; 279 U. S. 553).

The Armour and Swift defendants appealed from the order of May 1, 1925, to the Court of Appeals, whose jurisdiction to hear the appeal was challenged by the Government. The Court of Appeals first dismissed the appeal, but following a reargument revoked the prior decision and certified certain questions to this Court. After the certified questions had been argued, this Court directed that the entire record be sent up to it, and, after argument upon the entire record, this Court, on March 19, 1928, held that the consent decree was valid (276 U. S. 311).

Following that decision the Government moved in the District of Columbia Court of Appeals for vacation of the decree of that court directing that California Cooperative Canneries be allowed to intervene. That motion having been denied, a writ of certiorari was granted by this Court, which reversed the decision below and on May 20, 1929, again unanimously upheld the consent decree, saying: (Italics ours.)

> "When our opinion in the *Swift* case settled that
> * * * the Court of Appeals was without jurisdic-

> tion * * * and that the consent decree is valid, *all obstacles to the enforcement of the consent decree should have been promptly removed''* (279 U. S. 553, 559-560).

On July 24, 1929, pursuant to the mandate of this Court, the Supreme Court of the District of Columbia entered a final decree dismissing the petition of California Cooperative Canneries for leave to intervene, denying its motion to set aside the consent decree, vacating the existing suspension of that decree and restoring it to full force and effect. It further provided that a hearing should be held on October 2, 1929, as to the time within which the Armour and Swift defendants should *complete their compliance with the consent decree,* and that this should not be construed as permitting those defendants to make contracts or commitments which would render compliance with the consent decree any more difficult on their part (R. 195-6).

That hearing was never held for the reason that on August 10, 1929; less than two months before the date set by the Court for the hearing, the Armour and Swift defendants filed their petitions in the present proceeding asking modification of the consent decree on the ground of changed economic conditions.

During the first four years after the entry of the consent decree the time within which the packers must comply with its requirements was from time to time extended by orders of the court. But on February 21, 1924, Judge Bailey refused to grant an application made by the Armour defendants for a further extension, saying in his opinion (not reported):

> ''It is true that such orders as that now asked for have been heretofore made in this cause, but I

> do not feel justified in making any further orders of this character especially in view of the fact that four years have elapsed since the entry of the original decree."

That the petitioning packers have never in good faith performed or endeavored to perform the promises they made when they signed the consent decree is established beyond question. As late as February 5, 1930, the Attorney-General, in a communication to Senator McNary concerning the status of that decree, said:

> "The provisions of the decree, especially with reference to packer ownership of stockyards stock and the handling of unrelated commodities *have never been fully complied with.*" (Italics ours.)

The record clearly shows that at all times since the entry of the decree Armour & Company has been engaged in the handling of unrelated lines notwithstanding its promise to refrain therefrom (R. 941); that Armour & Company owns a controlling interest in the National Fruit Canning Company (R. 541); that Armour & Company holds a $500,000 mortgage on the plants of California Cooperative Canneries (R. 715).

The record also shows that Swift & Company owns a majority of the voting stock of Libby, McNeill & Libby, which is engaged in canning and distributing fruit, vegetables, milk and other products (R. 643).

The foregoing facts must raise grave doubts as to the good faith of the packers' present claims that economic change is the occasion of this latest effort to defeat the consent decree. Was it economic change that caused the first attempt, in 1921, that resulted in the Interdepartmental hearings? Was it change and was it good faith

that moved Armour & Company, in 1922, to employ a spurious independent, California Cooperative Canneries, to attack the decree? It was the Government and not Armour or the Canneries that exposed the fact that the latter was heavily mortgaged to Armour. Was it change and was it good faith that in 1924 prompted Swift and Armour to make their next attempt to defeat the decree by claiming that a stipulation which they had put into it rendered it void *ab initio*?

In the Findings of Facts (Finding 3; R. 1110) the court below found

> "That there have been a few sporadic instances of unfair practices and fixing of prices by the defendants,"

and in his opinion (R. 1050-1) he discussed these instances at considerable length.

The court, in its opinion (R. 1056-7) also referred to "a tendency to unfair trade practices" on the part of petitioners as respects reciprocal buying, evidence as to which was introduced by the Government (R. 637, 799, 801-2). The Federal Trade Commission has since, on September 21, 1931, Docket No. 1779, issued its order in the matter of Waugh Equipment Company, Arthur Meeker, Frederick W. Ellis and John B. Scott, who were officers and employees of Armour & Company, which proceeding was referred to in the testimony (R. 637) requiring the respondents to desist from using the traffic of Armour & Company in the solicitation of business for the Waugh Equipment Company, the Commission finding that such practice had been indulged in by the respondents Meeker and Ellis without the knowledge of other officials of Armour & Company, except F. Edson White, President, in behalf of Waugh

Equipment Company, in which Armour officials owned stock.

The court also said in the opinion (R. 1049), with respect to the profits of Swift and Armour:

> "I think that there has been a failure to make a full disclosure of the facts in this respect."

In short, the whole history of this case is one of bad faith, failure to fulfill their promises and contumacious conduct on the part of those invoking equitable relief from the burdens of the consent decree.

It has frequently been held by this and other courts that equity will not decree specific performance of a contract at the instance of one who has himself failed to perform his own obligations under said contract.

> Marble Co. *v.* Ripley, 10 Wall. (U. S.) 339, 357;
> Ellis *v.* Treat, 236 Fed. 120 (C. C. A., 9th Circ.);
> Montana Water Co. *v.* City of Billings, 214 Fed. 121;
> Bennett *v.* Stuart, 161 Ky. 264;
> Newby *v.* Laurence, 84 Neb. 622;
> Jayne *v.* Cortland Water Works Co., 107 N. Y. App. Div. 517;
> Caldwell *v.* Virginia F. & M. Ins. Co., 124 Tenn. 593.

Is there any reason why a court of equity should look with greater favor upon parties to a contract who, after receiving and enjoying all the considerations moving to them, have over a period of twelve years failed to perform, and persistently sought to nullify, the promises made by them, and now ask to be relieved entirely from the obligation of those promises?

"One who has received the full benefit of a contract, where it is of such a nature that it cannot be restored, cannot have the aid of equity to avoid the contract obligations."

21 Corpus Juris 179.

"• • • whenever a party, who, *as actor*, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in limine;* the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy."

1 Pomeroy, Eq. Jur., §397.

In *Union Cent. L. Ins. Co.* v. *Drake,* 214 Fed. 536, 542 (C. C. A., 8th Circ.), Judge Sanborn said:

"'He who has done iniquity cannot have equity', and 'He who comes into a court of equity must come with clean hands', are familiar maxims in equity. And the rule that one who has been guilty of bad faith, fraud or any unconscionable act in the transaction which forms the basis of his claim is entitled to no relief in equity on account of that transaction, forbids such a decree."

III.

The considerations presented by the bulk of the packers' evidence are for Congress and not for the courts, namely: (1) that Armour and Swift are actuated by good intentions; (2) that modification will benefit the public and relieve petitioners of alleged hardship and inconvenience; (3) that the existing Anti-Trust Laws are unwise.

The professed claim of Armour and Swift is that, during the twelve years since the entry of the consent decree, conditions have so changed that, if released now from the restraints of that decree, they will not constitute such a menace to free competition as they were at the time the consent decree was entered. But as shown in Point IV, *post*, the evidence falls far short of proving any changed conditions justifying modification. The petitioners' evidence addressed itself principally to the following propositions:

1. That Armour and Swift are actuated by good intentions;

2. That modification will benefit the public and relieve petitioners of alleged hardship and inconvenience;

3. That the existing anti-trust laws are unwise.

An examination of the material cited in the footnote (see Appendix, *post*, page 51) to *Swift & Co.* v. *U. S.*, 276 U. S. 311, 319, shows that such contentions by Swift and Armour are by no means new. This Court has repeatedly considered similar claims by these packers, as well as by others, under the anti-trust laws.

It is thoroughly well established by a long line of anti-trust decisions that those are considerations to be addressed, not to the courts, but to Congress, and that the

only proper concern of the courts in cases of this kind is whether the facts show a situation or potential result (*Swift & Co. v. U. S.*, 276 U. S. 311, 326) within the condemnation of the Anti-Trust Laws that Congress has seen fit to enact:

> Paramount Famous Lasky Corp. *v.* U. S., 282 U. S. 30, 44;
>
> Thomsen *v.* Cayser, 243 U. S. 66, 85;
>
> International Harvester Co. *v.* Missouri, 234 U. S. 199, 209;
>
> Standard Sanitary Mfg. Co. *v.* U. S., 226 U. S. 20, 49 (affirming 191 Fed. 172);
>
> Armour Packing Co. *v.* U. S., 209 U. S. 56, 82;
>
> Standard Oil Co. *v.* U. S., 221 U. S. 1, 65;
>
> New Haven R. R. *v.* Interstate Commerce Comm., 200 U. S. 361, 399;
>
> U. S. *v.* Northern Sec. Co., 120 Fed. 721, 730 (affirmed 193 U. S. 197);
>
> Lee Line Steamers, Inc. *v.* Memphis, etc., Packet Co., 277 Fed. 5, 8 (C. C. A., 6th Circ.);
>
> Ford Motor Co. *v.* Union Motor Sales Co., 244 Fed. 156, 162 (C. C. A., 6th Circ.);
>
> U. S. *v.* Great Lakes Towing Co., 208 Fed. 733, 744 (D. C., Ohio);
>
> Standard Fashion Co. *v.* Magrane Houston Co., 254 Fed. 493, 499 (D. C., Mass.).

In the *International Harvester* case, *supra*, the Court said (234 U. S., at p. 209):

> "It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect. *Armour*

Packing Co. v. *United States*, 209 U. S. 56, 82; *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 49."

In *Standard Sanitary Mfg. Co.* v. *U. S.*, 226 U. S. 20, 49, affirming 191 Fed. 172, the Court said:

> "The Sherman law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained. * * * The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intentions of parties, and, it may be, of some good results. *United States* v. *Trans-Missouri Freight Asso.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62."

In the opinion below (191 Fed. 172) the Court, speaking of the defendants' contentions, said (p. 178):

> "They say that eyes illumined by the light of reason will see that what the defendants did was from the standpoint of the public interests good, and not evil."

With regard to this the Court said at page 182:

> "They may not break the law because they think that it will be well to do so. In view of the character of the parties, the necessary effect of the agreements was clearly to restrain trade within the purview of the statute. In such case they cannot be taken out of the category of the unlawful by general reasoning as to their expediency or non-expediency or the wisdom or want of wisdom of the statute which prohibited their being made. When the nature and character of the contracts create a conclusive presumption bringing them within the statute, such a result is not to be disregarded by the courts by a substitution of a judi-

cial appreciation of what the law ought to be for the plain judicial duty of enforcing the law as it is. *Standard Oil Co.* v. *United States*, 221 U. S. 65."

In *Armour Packing Co.* v. *United States*, 209 U. S. 56, 82, the Court said:

> "The right to make such regulations is inherent in the power of Congress to legislate respecting interstate commerce, and such considerations of inconvenience and hardship address themselves to the law-making branch of the Government. *New Haven Railroad Company* v. *Interstate Commerce Commission*, 200 U. S. 399. It may be that such contracts should be recognized, giving stability to rates for limited periods; that the contracts being filed and published, and the rate stipulated known and open to all, no injustice would be done. But, as we have said, such considerations address themselves to Congress, not to the courts. It is the province of the judiciary to enforce laws constitutionally enacted, not to make them to suit their own views of propriety or justice."

In *Standard Oil Co.* v. *U. S.*, 221 U. S. 1, 65, the Court pointed out that "the rule of reason" did not go so far as to justify a court in substituting its own view for that of Congress as to what the law ought to be. The Court said that acts clearly in restraint of trade within the purview of the statute

> "Could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made."

In *New Haven R. R.* v. *Interstate Commerce Commission*, 200 U. S. 361, 399, the Court said:

> "Even, therefore, if the result of applying the prohibitions as we have interpreted them will be practically to render it difficult, if not impossible, for a carrier to deal in commodities, this affords no ground for relieving us of the plain duty of enforcing the provisions of the statute as they exist."

In *U. S.* v. *Northern Securities Co.*, 120 Fed. Rep. 721 (affirmed 193 U. S. 197), the Circuit Court said, at pages 730-1:

> "It may be that such a virtual consolidation of parallel and competing lines of railroad as have been effected, taking a broad view of the situation, is beneficial to the public rather than harmful. It may be that the motives which inspired the combination by which this end was accomplished were wholly laudable and unselfish; that the combination was formed by the individual defendants to protect great interests which had been committed to their charge; or it may be that the combination was the initial and a necessary step in great designs, which, if carried out as they conceived would be of inestimable value to the communities which these roads serve and to the country at large."

The court held that those propositions involved "questions of public policy which Congress must determine" and that the court's duty was merely to decide whether or not the facts showed a violation of the Sherman Act as interpreted by the Supreme Court.

The most recent statement of the position of the Supreme Court with reference to the Sherman Act is found in *Paramount Famous Lasky Corporation, et al.*, vs. *United States*, 282 U. S. 30, in which the court said, at page 43:

> "The Sherman Act seeks to protect the public against evils commonly incident to the unreasonable

destruction of competition and no length of discussion or experimentation amongst parties to a combination which produces the inhibited result can give validity to their action. Congress has so legislated 'as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.' *Eastern States Lumber Assn.* v. *United States, supra,* 613."

IV.

The petitioners failed to sustain their burden of showing that conditions had so changed since the entry of the consent decree as to justify the modification made by the court below and that, if given the right to engage in the manufacture and wholesaling of groceries, they would not constitute a renewed threat of the "long feared monopoly in meat and other food products", to prevent which the Consent Decree was entered under the anti-trust laws.

In *Swift & Co.* v. *United States,* 276 U. S. 311, 318, this Court pointed out that the consent decree was entered "with a view to *preventing* a long feared monopoly in meat and other food products", and in a footnote (p. 319) cited the authorities in which might be found the history of the preceding thirty years of struggle on the part of the Government to prevent the packers from accomplishing their purpose (see Appendix, *post,* p. 51).

In the same decision, at page 326, this Court, answering the argument that there was no case or controversy because the Government had by accepting the stipulation tacitly abandoned all charges that defendants *had violated* the law, said (italics ours):

> "The argument ignores the fact that a suit for an injunction deals primarily, not with past violations, but with *threatened future ones;* and that an injunction may issue *to prevent future wrong,* although no right has yet been violated."

At page 320 the Court pointed out that the decree to which the defendants *consented* contains the recital "that the allegations of the petitioner *state a cause of action against the defendants* under the provisions" of the Sherman Anti-Trust Act and supplementary legislation, and at page 327 the Court said:

> "The allegations of the bill not specifically denied may have afforded ample basis for a decree limited to future acts. *Deputron* v. *Young,* 134 U. S. 241, 250-251. If the court erred in finding in these allegations a basis for fear of future wrong sufficient to warrant an injunction, its error was of a character ordinarily remediable on appeal".

It is fairly inferable from that decision that, if in 1920 the packers, instead of consenting to the decree, had resisted, and the Government had produced adequate evidence to support the allegations of the bill with respect to *threatened* monopoly, a *judicial* decree by the court in the same terms as the consent decree would have been upheld by this Court, even though there had been no proof of *past* violations of the Anti-Trust Laws.

When Swift and Armour petitioned for modification of the consent decree they assumed the burden of proving affirmatively that conditions had so changed since the entry of that decree as to render it inequitable and that, if released now from the restraints of that decree, there would be no such "basis for fear of future wrong sufficient to

warrant an injunction" as existed in 1920—that those restraints are no longer necessary to *prevent* the future achievement by the packers of the "long feared monopoly in meat and other food products."

We submit that the Swift and Armour defendants have failed to sustain that burden; that they have not shown any changed conditions which justify the modification made by the court below, and that under such modification the defendants would soon be as great a menace as they were in 1920.

In the first place, it is self-evident that the difference between the conditions existing now and those existing when the consent decree was entered is due in large part to the decree itself. That decree, buttressed by the Packers and Stockyards Act, formed a dam behind which the packers were confined to their legitimate activities. It was the one really effective achievement of the Government in its many years of struggle with the packers. While Swift and Armour have never fully complied with its requirements, they have nevertheless felt its restraining influence quite keenly, as is shown by their twelve years of frantic and unceasing effort to destroy it; and in those twelve years, under the protection of the decree, the food industry has attained the state of healthy competition disclosed by the evidence. And now the court below has opened a great breach in the centre of the dam, apparently believing that the remaining portions of the structure will retain sufficient of the water for all practical purposes.

In the second place, any economic changes disclosed by the evidence lay for the most part in fields to which the court below, in its decree of January 31, 1931, refused the packers readmittance. In general, the petitioners sought to have the decree so modified as to permit them:

(1) To retain or acquire the ownership of stockyards, stockyard market companies and stockyard terminal railroads;

(2) To engage in the manufacture and sale of lines of food unrelated to the meat industry, known as the "unrelated lines";

(3) To own and operate retail stores.

It is evident from the Court's opinion that it found far more changes in conditions respecting the stockyards and the retailing of food products than in the case of the manufacture and wholesaling of the unrelated lines, yet modified the decree as to the field in which there was the least justification while refusing it in those where it found the most.

With respect to the stockyards, the court found three changes in conditions which it believed limited the power of the defendants to acquire a monopoly. These were:

1. The enactment of the Packers and Stockyards Act in 1921 (R. 1052-3);

2. The regulation of terminal railroads by the Interstate Commerce Commission (R. 1053);

3. General dissemination of statistics regarding livestock with respect to which the defendants formerly had more or less exclusive information (R. 1053-4).

With respect to retailing, it appeared that since the decree had been entered chain retail stores had increased from 15,000 to 60,000 in 1929, and that whereas in 1920 only 1,200 of these stores had fresh meat departments, in 1929 15,800 sold fresh meats. Notwithstanding these changes which the court recognized, it refused to modify the decree with respect to the stockyards or the ownership or operation of retail stores because it felt that to do so would

restore the menace of the packers and that it would result in the destruction of their competitors in these fields. As no appeal was taken by the packers from the refusal of the court to modify the decree as to the stockyards and retailing, reference is made thereto only to show by comparison that whatever evidence there may have been of change relates rather to stockyards and retailing than to manufacture and wholesaling.

It does appear that there has been since 1917 some growth, chiefly through combinations and mergers, of what are called horizontally integrated companies engaged in the manufacture of food products. These combinations and mergers were to a large extent due to the promotional activities of bankers during the recent halcyon days to have a source of securities which they could sell to an eager public rather than to any changes surrounding the production of food products. This is not only a matter of common knowledge but is established by the record (R. 700-1).

None of these companies, however, begins to approach either the Armour or Swift defendants in size; sales of the two *largest* in 1929 each was approximately 30% of the sales of *either* Armour *or* Swift; the sales of the next largest were less than 13%, and the sales of no other amounted to 10% (R. 838-a). Moreover, none of these companies competed with the petitioners as slaughterers.

Practically no change has taken place since 1919 in the wholesale food business. The record shows that there are approximately six thousand wholesale grocers in the United States, employing between 125,000 and 150,000 persons, and with a total investment in the business of between $1,250,000,000 and $1,500,000,000 (R. 773); that competition among them is keen and active (R. 761, 780, 785, 786, 788, 775); and that profits are very small (R. 761, 775, 780) and

changes in the prices of producers and manufacturers are promptly reflected (R. 769, 770, 780).

The reason given by the packers for their desire to invade the field of wholesaling the unrelated lines is that they already have facilities which they could use in this business without greatly increased expenses. In other words, profits would be increased. These facilities consist of their present selling organizations, their branch stores, warehouses, private railroad cars and trucks. For example, it is in evidence that Armour owns 391 branch houses, and Swift 431; that Armour owns 6,766 refrigerator cars and Swift 5,509; that Armour operates 317 car routes and Swift 1,014 (Petitioners' Exhibits 119, 121, 122 and 143). Justice Bailey in his opinion gives a partial explanation of the manner in which these facilities could be employed with comparatively little increase of overhead in the distribution of groceries as follows (R. 1054):

> "A certain minimum weight is required by the railroad companies in each of these cars, so that where, for instance, the minimum weight required is 10,000 pounds and only 8,000 pounds are put into the car by the shipper he will nevertheless have to pay freight charges on 10,000 pounds. The result, therefore, is that where the packer has only 8,000 pounds of meat to be shipped in one of these cars and he adds enough of other commodities to bring up the weight of the whole to the minimum, while he has to pay for the total amount shipped, he is enabled to ship the additional commodities without additional cost. This it is claimed, gives the packer whose business is large enough for him to make use of these cars, a great advantage over his competitors in other lines of business. He either pays less freight for the shipment of his meat than he would other-

wise do, or *he is enabled to ship his other commodities almost without expense.*" (Italics ours.)

But it is all important to note that there is no change in this respect from the conditions which existed at the time the proceeding was commenced and that the modification of the Decree permits the packers to do just what the original bill sought to prevent. The bill of complaint in this respect alleged as follows (R. 17; italics ours):

> "Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. *To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities.* The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.
>
> "These attempts to monopolize have resulted in complete control in many of the substitute food lines.

> They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table." (Italics ours.)

The Government refers above to advantages enjoyed by the defendant meat packers through the use of their facilities for the distribution of "unrelated commodities" in 1920. Ten years later, the court below stated, in its opinion, that the big packer "either pays less freight for the shipment of his meat than he would otherwise do, or he is enabled to ship his other commodities (unrelated lines) almost without expense" (R. 1054-5). In this respect, the court below finds "no change" and yet it grants permission to manufacture and to handle the unrelated lines.

Not only would the danger of monopoly be quite as great as in 1920 if this modification of the decree is permitted, but in important respects the danger would be far greater. Over independent wholesalers the packers would have the following marked advantages:

> (1) The power of their large resources which rival those of all the independent wholesale grocers in the country;
>
> (2) The advantage of fast freight service and deliveries on schedule, through the use of their own refrigerator cars in which in addition to their meat products they would be permitted to place grocery items;
>
> (3) Freight savings, such as might arise out of the savings of penalties now imposed where meat shipments are less than minimum carload quantities;

(4) The ability to take advantage of the natural inclination of retailers handling meats to give the same supplier a grocery order for many obvious reasons, such as saving of time in making purchases, better service as a large customer and securing better choice of meats, with which there must be included the potential ability to force the retailer to purchase grocery orders from the same party as the seller of his meats in order to secure such service. In this respect the defendants would possess a greater advantage than existed in 1920, due to the large increase in the number of retail stores handling meats as well as groceries.

As to the present size and power of the packers, it would seem sufficient to quote the following excerpts from the opinion below:

> "Swift & Company and Armour & Company each had sales amounting to more than one billion dollars in 1920 and also in 1929. The business done by the other two defendants was much smaller. So far as volume of business is concerned, however, only the A. & P. approached the volume done by Armour & Company or by Swift & Company and the nature of the business of A. & P. can hardly be said to compete with that of the packers" (R. 1047).
>
> * * * * * *
>
> "The petitioners, Swift & Company and Armour & Company, together control over 54% of the output of all packers engaged in interstate commerce, and all the defendants combined control over 70% of that business so that, if the four defendant groups should act together under any agreement or combination, **they would unquestionably be able to control the greater part of this interstate business and this would be the case even if Swift & Company and Armour & Company alone should combine" (R. 1050).**

The volume of each of these packers alone exceeds that of every one of the so-called "great integrated" companies such as National Dairy Products, the Borden Company, General Foods Corporation and Standard Brands, and exceeded in 1929 by almost 700 million dollars the largest of these other food manufacturers (R. 838a.).

Armour & Company owns a controlling interest in the National Fruit Canning Company which has an annual business of approximately $3,500,000 (R. 541). It also holds a $500,000 mortgage on the plants of California Co-operative Canneries, whose total liabilities to it exceed $1,000,000 (R. 715).

Swift & Company owns 60% of the voting stock of Libby, McNeil & Libby, which is engaged in the canning of fruits, vegetables and other products (R. 643).

With respect to the profits made by Swift and Armour during the period since the entry of the consent decree, the court below said (R. 1049):

> "There are some rather singular facts as to the profits of Swift and of Armour, which are not explained. * * * I think that there has been a failure to make a full disclosure of the facts in this respect."

However, as we are now considering future possibilities in case the modifications granted below are allowed to stand, the question of profits prior to those modifications is of much less importance than the present great size, power and potentialities of these packers and the increases in volume and profits that they themselves here assert will come to them if permitted to manufacture and wholesale all foods in addition to their present volume (which volume includes not only meat products but dairy products and the hundreds of other items still allowed them under the original decree).

The meat packing business itself is the largest in the United States, having now passed the automobile business in point of volume (R. 419). The two largest factors in the largest industry in the United States are here asking permission to become still larger. Moreover, in the ten years during which it seeks to show "changes" detrimental to itself, Swift & Company, the largest packer, has increased the number both of its car routes and of its branch houses (R. 956). This hardly bears out its claim that the restrictions of the decree have burdened it with surplus facilities—the cars and branch houses it now desires to use for unrelated lines.

That the packers still retain the disposition to use unfairly against competitors such advantages as they are allowed to have is also sufficiently indicated in the opinion (R. 1050-51) and findings (Finding No. 3, R. 1110) of the court below.

In view of the foregoing facts, can there be any real doubt that the readmission of the packers to the wholesale grocery field and the permission to them to engage also in the *manufacture* of such products will speedily result in the elimination of the independent wholesale grocers and in the curtailment of the business of the independent food manufacturers? And with the independents curtailed or eliminated, what will become of the independence of the independent retailers? Naturally they cannot look for their supplies to their competitors, the chain stores; their only source will be the packers. And when the growing preference of the public for retail stores handling both groceries and meats is taken into consideration, the glittering possibilities opened to the packers come more clearly into view.

The court below expressed concern (R. 1058-9) regarding the independent retailers and refused to permit the

packers to retail, but, when the court admitted the packers to both manufacturing and wholesaling in the entire food field, it left the independent retailer merely the temporary shadow of protection. Nor would the surviving chain retailers be entirely free of packer domination. In the opinion below, the court said:

> "The chains do a very small part of the slaughtering business, and are themselves largely dependent upon the petitioners for their supplies" (R. 1049).

Only one thing more is needed, namely, the reduction of competition in meat products to the point it had reached in 1920. The evidence shows that, under the protection of the consent decree, such competition has grown, but does it show that this competition cannot again be suppressed—does it show this with sufficient certainty to justify releasing the packers from a restraint which, once relinquished, cannot easily be reimposed?

Testimony of independent meat packers was introduced to support petitioners' claim that the independents have grown, at the expense of the big four packers, during the past ten years, but the Government's Exhibits 9 and 22 are an effectual answer. They establish that, in 1928, the federally inspected slaughterers, other than the defendant packers, showed, as a group, $515,716 less than no net profits, while, for the same year, the defendant packers had net profits of $16,299,602. Obviously, if permission to handle unrelated lines, granted by the court below, enables Swift and Armour to profit out of groceries, and so to reduce prices of meats, as they claim, then the future of the independent meat packer is precarious. The court below points out some of the advantages that Swift and Armour already have over the smaller meat packers and then quotes

President White of Armour & Company with respect to its progress in the development of the quick freezing process, as follows:

> " 'The development so far made would give us ample satisfaction to the point where we could meet the competition of any food that is now prepared in any method or by any method that is now on the market, when and if we want to do it' " (R. 1056).

Elsewhere in the record are found most express admissions, both by the President of Swift & Company and the President of Armour & Company that their position is impregnable even if the consent decree remains unchanged (Government's Exhibit 101, pp. 6-7, and R. 638).

The court below says "Swift & Company has paid dividends regularly for forty-four years and from 1920 to 1929 at the rate of eight per cent and during the same time has added to its surplus and reserve over $16,000,000" (R. 1049).

The United States has repeatedly shown in this case, by its witnesses and by cross-examination of petitioners' witnesses, that if the packers have the surplus equipment and personnel claimed, then modification of the decree, as prayed, would transfer all or part of the burden of this surplus, this extra warehousing space and equipment and personnel from the shoulders of the defendants, who agreed, for a consideration, to leave the field, to the shoulders of the independent merchants of the country, engaged in the various branches of food wholesaling, because it is repeatedly shown by both packer and Government witnesses that there is no shortage of facilities today in any part of the country (R. 773, 1046, 688, 775).

In the matter of national distribution of their products the Big Four Packers are far ahead of any competitors (R.

527), only a few of whom can fairly be regarded as in any sense national distributors, and of these only two show annual sales in excess of $50,000,000 (R. 866-a). The bulk of the competition is of a local character, by packers whose operations are limited within a radius of 200 miles (R. 434, 440, 437, 426, 421). As was pointed out by the court below, the advantage which these local packers now possess of being able to supply their customers with freshly killed meat, can readily be overcome by the perfection and application of the quick-freezing process. In the opinion below the court said (R. 1055):

> "A great change in methods of distribution of meat and meat products is being brought about too by what is known as the quick-freezing process. Meat is subjected to temperatures of from 30 degrees to 40 degrees below zero (Fahrenheit), and when thus frozen, the texture and flavor of the commodity is unimpaired, and it can be preserved in this condition for months. By this method meat can be cut up by the packer and prepared in packages for the retail markets and sold in the original packages. *One great advantage that the local packer now has will end, for there will be no advantage in appearance or flavor in freshly slaughtered meats.* Then too the packer can more easily keep his products, and not be forced to dump them upon the market at unfavorable times. He can also, by the use of his brands, make use of the increasing public demand for articles which are so branded that the consumer can know that he has tested and found satisfactory before." (Italics ours.)

In claiming "changes" since 1920, the packers vigorously urge that modification of the consent decree is justified, for the reason that large corporations, such as the

Great Atlantic & Pacific Tea Company (mentioned by the court as A. & P.) and Kroger Grocery & Baking Company have gone into the meat packing business. But an exhibit introduced by petitioners shows that A. & P. has no "meat packing operations", other than "meat warehousing" and "bacon slicing" (R. 921). Moreover, Kroger has only two meat packing plants. One was acquired in 1920 and the other has been operated for twenty years (R. 501). Kroger closed three hundred stores in 1930 (R. 502). There is little "menace" here.

The court below said (R. 1049):

> "I think that the petitioners exaggerate these dangers. The chains do a very small part of the slaughtering business and are themselves largely dependent upon the petitioners for their supplies. There is constant and keen competition, and *I do not see that the size of the chains give them any unfair advantages over the packers.*" (Italics ours.)

That is conclusively established. But there is no proof nor even any claim by the packers that *the wholesale grocers* do slaughtering or make large profits or are in any way a menace to the packers. Why, then, does the court below readmit these meat packers to the wholesale grocery business and yet continue to exclude them from the chain store field, in which are found many prosperous chains, including the only food company that can even compare in sales volume with either Armour or Swift, that is A. & P.? The modification seems to protect no one except the big packers and the chains, since it leaves the packers free to resume their operations in the grocery manufacturing and wholesaling field to the prejudice of independent manufacturers and wholesalers, who now constitute the chief source of supply for the small independent retail grocers. The

court, in its opinion (R. 1058), said, as respects retailing: "The control by the defendants of the great amount of interstate commerce in meats and other articles from the producer to the consumer would probably result in the almost complete annihilation of the independent retail grocer, already a minority in volume of business." And yet, the modification decreed by the court will eventually leave these independent retailers (who have already lost a large volume of their business to the chain stores) dependent upon the petitioners for supplies not only of meat, but also of all other foods.

The packers claim that they can accomplish economies by re-entering the wholesale grocery field, but there is no proof introduced or offered that the packers made savings for the public during any part of those forty years, *prior* to 1920, in which they were engaged in business and were free to handle and did handle, at wholesale or otherwise, the unrelated lines.

In attempting to show "change", petitioners claim that this court, March 1, 1920, two days after the consent decree was entered, changed the interpretation of the Sherman Act, in deciding *United States* v. *United States Steel Corporation*, 251 U. S. 417. The answer is found in the Court's opinion in that case, which cites, with approval, two earlier outstanding opinions under the Sherman Act; that in the Standard Oil case and that in the Tobacco case.

Another claim of change is the enactment of the Packers and Stockyards Act, 1921, but, as we have shown, Congress, in enacting that statute, considered the consent decree as permanent. Moreover, the statute has no bearing upon the modification made by the court below, because this Act of 1921 is limited in scope to the meat industry and has no reference to unrelated lines.

Let us suppose that instead of applying for modification of the consent decree the packers had applied to the Attorney-General for approval to acquire one or more of the large integrated food companies, whose operations, they now claim, entitle the packers to modification of the decree. Would this be any different from the situation that confronted the Government and the Attorney-General at the time of recent proposals to organize large corporations to engage in the sale of food products, representing a merger of existing food corporations? These proposals resulted in action by the Government before consummation of the proposed mergers, and decrees against the defendants followed (*United States* v. *Ward Food Products Corporation,* U. S. District Court for Maryland, February, 1926; *United States* v. *National Food Products Corporation,* U. S. District Court, Southern District of New York, March 4, 1926).

Is not the same question before this court in the guise of modification of this decree, that is, modification to permit the packers to create just such a combination in the meat and food industries?

The consent decree, as conceived by the packers and entered into by the Government in 1920, was, in fact, and still should be considered an entirety, a plan for composing the controversy that had persisted between these packers and the Government through the Department of Justice (and later the Federal Trade Commission) for more than thirty years (Appendix, *post,* p. 51). Each part of the decree is a constituent and inseparable part thereof and its modification in particulars so vital as those ordered by the court below has the effect of nullifying the agreement upon which it is based and will seriously endanger, if not entirely destroy, the decree.

In *Swift & Co.* v. *United States*, 196 U. S. 375, this court said, at page 396:

> "The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aikens *v.* Wisconsin, 195 U. S. 194, 206. * * * The unity of the plan embraces all the parts."

Certainly the evidence in this case furnishes no assurance that the packers, if granted freedom to engage in the manufacture and wholesaling of groceries, will not be able to reestablish at least as near an approach to monopoly of the food supply as they had when the consent decree was entered.

Failing to furnish such assurance, they have failed to sustain the burden of proof assumed by them when they petitioned for modification of that decree. The failure of the court below to make or to rule upon the proposed findings submitted to it by this intervener (R. 1082-1093), was duly excepted to (R. 1117) and assigned as error (R. 1125).

V.

The decree appealed from should be reversed in so far as it modified the consent decree, and the petitions should be ordered to be dismissed, with costs to appellants.

Dated, February 8, 1932.

Respectfully submitted,

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APPENDIX.

Events Preceding the Consent Decree.

(See also footnote in *Swift & Co.* v. *U, S.*, 276 U. S. 311, 319)

1. "The first public record of an inquiry into the relations of these corporations is the report made in 1890 by a committee of the United States Senate. After two years of investigation, this committee unanimously reported that there was an agreement between the then leading packers, namely, Armour & Co., Swift & Co., Nelson, Morris & Co., Hammond & Co., to refrain from competition. The committee found, among other things, that there was collusion with regard to the fixing of prices and the division of territory and business. *The conditions revealed by this investigation, it may be remarked, were in part responsible for the passage of the Sherman Anti-Trust Act on July 2, 1890.*" (Summary of the Report of the Federal Trade Commission on the Meat-Packing Industry, July 3, 1918, page 22.)

2. The activities of the packer defendants during the two decades following enactment of the Sherman Law are described by this Court in *Stafford* v. *Wallace*, 258 U. S. 495, decided in 1922. At page 499 this Court said:

> "It appeared from the data before the Committee that for more than two decades it had been charged that the five great packing establishments of Swift, Armour, Cudahy, Wilson and Morris, called the 'Big Five', were engaged in a conspiracy in violation of the Anti-Trust Law, to control the business of the purchase of the live stock, their preparation for use in meat products, and the distribution and sale thereof in this country and abroad. In 1903, a bill in equity was filed by the United States to enjoin further conduct of this alleged conspiracy, as a viola-

tion of the Anti-Trust Law, and an injunction issued. *United States* v. *Swift & Co.*, 122 Fed. 529. The case was taken on appeal to this Court, which sustained the injunction. *Swift & Co.* v. *United States,* 196 U. S. 375. In 1912, these same defendants or their successors in business were indicted and tried for such violation of the Anti-Trust Law, and acquitted. (See House Committee Hearings before Committee on Agriculture, 1920, Vols. 220-2, Subject, Meat Packers Legislation, p. 718.) It further appeared that on February 7, 1917, the President directed the Federal Trade Commission to investigate and report the facts relating to this industry and kindred subjects. The Commission reported that the 'Big Five' packing firms had complete control of the trade from the producer to the consumer, had eliminated competition and that one of the essential means by which this was made possible was their ownership of a controlling part of the stock in the stockyards companies of the country."

3. In 1903 (in a contested proceeding) an injunction was issued by the United States Circuit Court, Northern District of Illinois, against Swift & Company, Armour & Company, Cudahy Packing Company, Nelson Morris & Company, Schwarzschild & Sulzberger (predecessors of Wilson & Company), together with other corporation and individual defendants, restraining them from violations of the Sherman Anti-Trust Act. Appeal from the injunction was prosecuted to this Court, and with certain slight alterations the Decree appealed from was affirmed. This injunction still is in force and effect. (*Swift & Company* v. *United States,* 196 U. S. 375.)

4. In 1905 an indictment was returned by the United States grand jury in Illinois against Armour & Company,

Swift & Company, Cudahy Packing Company and the individuals composing Morris & Company, together with a number of individuals connected with the corporations, charging them with conspiracy in restraint of trade and commerce and in an attempt to monopolize such trade and commerce in violation of the Sherman Anti-Trust Act. After the overruling of a plea in abatement and a demurrer interposed by the defendants to the indictment, the defendants filed special pleas, claiming immunity by reason of their having given testimony against themselves before the Commissioner of Corporations. This plea was sustained and the indictment dismissed as to the individual defendants (*United States* v. *Armour*, 142 Fed. 808). An order of *nolle prosequi* was subsequently entered against the corporation defendants.

5. Following the entry of the Decree in *Swift & Company* v. *United States* (*supra*), in 1903 there came the organization of National Packing Company, the entire stock of which was held by Armour & Company, Swift & Company and Morris & Company:

> "The big packers thereupon decided to merge the properties which they had secretly acquired, and thus it was that the National Packing Co. came to be formed. Cudahy and Sulzberger were invited to purchase stock in the company, but declined to assume these additional obligations, probably for financial reasons. The entire stock of the National Packing Co. was therefore held by Armour, Swift and Morris in proportion to the capital assets of the respective companies; that is to say, Armour & Co., 40.11; Swift & Co., 46.70; Morris & Co., 13.19; and properties acquired by the National Packing Co. after its formation in 1903 were jointly paid for by the

Armour, Swift and Morris companies in the same proportion.

"The board of directors of the National Packing Co. was made up entirely of representatives of the three big companies. When these directors met each Tuesday afternoon at 2 o'clock (the same day and hour as the old Veeder pool meetings) to decide on policies, prices, and buying and shipping plans they were, in fact, acting for all their joint interests, and no further communication was necessary. This simple and highly effective plan for interchanging information and fixing joint policies persisted undisturbed until, after the failure of the criminal suit against several of the big packers in 1911-12, the threat of a civil suit brought about the dissolution of the National Packing Co. during July and August, 1912. The dissolution consisted in a distribution of the properties of the National Packing Co. among Armour & Co., Swift & Co. and Morris & Co., and left all the strong independents which had been absorbed into the National Packing Co. still in the hands of the packers." (Summary of the Report of the Federal Trade Commission on the Meat Packing Industry, July 3, 1918, pp. 23-24.)

6. On February 7, 1917, the President of the United States directed a letter to the Federal Trade Commission requesting an investigation of the facts relating to the production, ownership, manufacture, storage and distribution of food products, in which he said:

"Pursuant to the authority conferred upon me by the Act creating the Federal Trade Commission, therefore, I direct the Commission, within the scope of its powers, to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs and the products or by-products arising from or in connection

with their preparation and manufacture; to ascertain the facts bearing on alleged violations of the anti-trust acts, and particularly upon the question whether there are manipulations, controls, trusts, combination, conspiracies, or restraints of trade out of harmony with the law or the public interest" (Report of Federal Trade Commission on Meat-Packing Industry, Part I, p. 392).

On July 3, 1918 the Federal Trade Commission made its report to the President of the United States. In a letter transmitting the report the Commission said (Summary of Report on Meat Packing Industry, July 3, 1918, p. 3):

> "Answering directly your question as to whether or not there exist 'monopolies, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law and the public interest,' *we have found conclusive evidence that warrants an unqualified affirmative.* * * *"
>
> "It appears that five great packing concerns of the country—Swift, Armour, Morris, Cudahy and Wilson—have attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands".

The situation disclosed by this report of the Federal Trade Commission is summarized by it in the following paragraphs: (Italics ours)

> "Five corporations—Armour & Co., Swift & Co., Morris & Co., Wilson & Co., Inc., and the Cudahy Packing Co.—hereafter referred to as the 'Big Five' or 'The Packers', together with their subsidiaries and affiliated companies, not only have a monopo-

listic control over the American meat industry, but *have secured control, similar in purpose if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable-oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff*" (Summary of Report on Meat Packing Industry, July 3, 1918, p. 9).

"The business of the packing companies originally was limited to the slaughter of live stock and the distribution of meat and animal products and by-products. Now, however, they are rapidly extending their control over all possible substitutes for meat—fish, poultry, eggs, milk, butter, cheese, and all kinds of vegetable oil products, and have secured strategic points of collection, preparation and distribution of these products" (Summary of Report on Meat Packing Industry, July 3, 1918, p. 13).

"The purposes of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely:

"To monopolize and divide among the several interests the distribution of the food supply not only of the United States but of all countries which produce a food surplus, and, as a result of this monopolistic position,

"To extort excessive profits from the people not only of the United States but of a large part of the world" (Summary of Report on Meat Packing Industry, July 3, 1918, p. 40).

7. In July, 1919, the National Wholesale Grocers' Association of the United States began a proceeding before the Interstate Commerce Commission (I. C. C., Docket No. 10745), claiming that the meat packers were obtaining preferential services and rates from the carriers and that such

services and rates were discriminatory and constituted unfair competition. The meat packers intervened in said proceeding and themselves conducted the defense.

8. The report of the Federal Trade Commission and the data collected by the Commission were turned over to the Department of Justice, which in 1919 commenced grand jury proceedings in Chicago and New York with a view to determining whether the Government should proceed against the Packers by indictment or by action in equity, the evidence in the possession of the Department of Justice indicating that the large meat packers had violated the Sherman Anti-Trust Act (Hearings before Senate Committee on Agriculture and Forestry on S. 2199 and S. 2202, Part 4, p. 47; Hearing before House Committee on Agriculture on Meat Packer Legislation, Part 31, pp. 2327-8, 2349; Report of Federal Trade Commission to the United States Senate on Packers Consent Decree, Document 219, 68th Congress, 2d Session, p. 2).

9. While the grand jury proceedings were pending, representatives of the packers came to the Attorney-General for the purpose of negotiating a settlement of the differences which existed between the Government and the large meat packers as to their conduct under the Sherman Anti-Trust Law, (Hearing before Senate Committee on Agriculture and Forestry on S. 2199 and S. 2202, 66th Congress, 2d Session, pp. 37, 38; Hearings before the House Committee on Agriculture, 66th Congress, 2d Session, on Meat-Packer Legislation, Part 31, pp. 2311-2313).

As a result of these negotiations an agreement was entered into which resulted in the consent decree of February 27, 1920.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568

THE UNITED STATES OF AMERICA, *Appellant*,

vs.

SWIFT & COMPANY ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL., *Appellants*,

vs.

SWIFT & COMPANY ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION, *Appellant*,

vs.

SWIFT & COMPANY ET AL.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR SWIFT & COMPANY ET AL. AND ARMOUR & COMPANY ET AL., APPELLEES.

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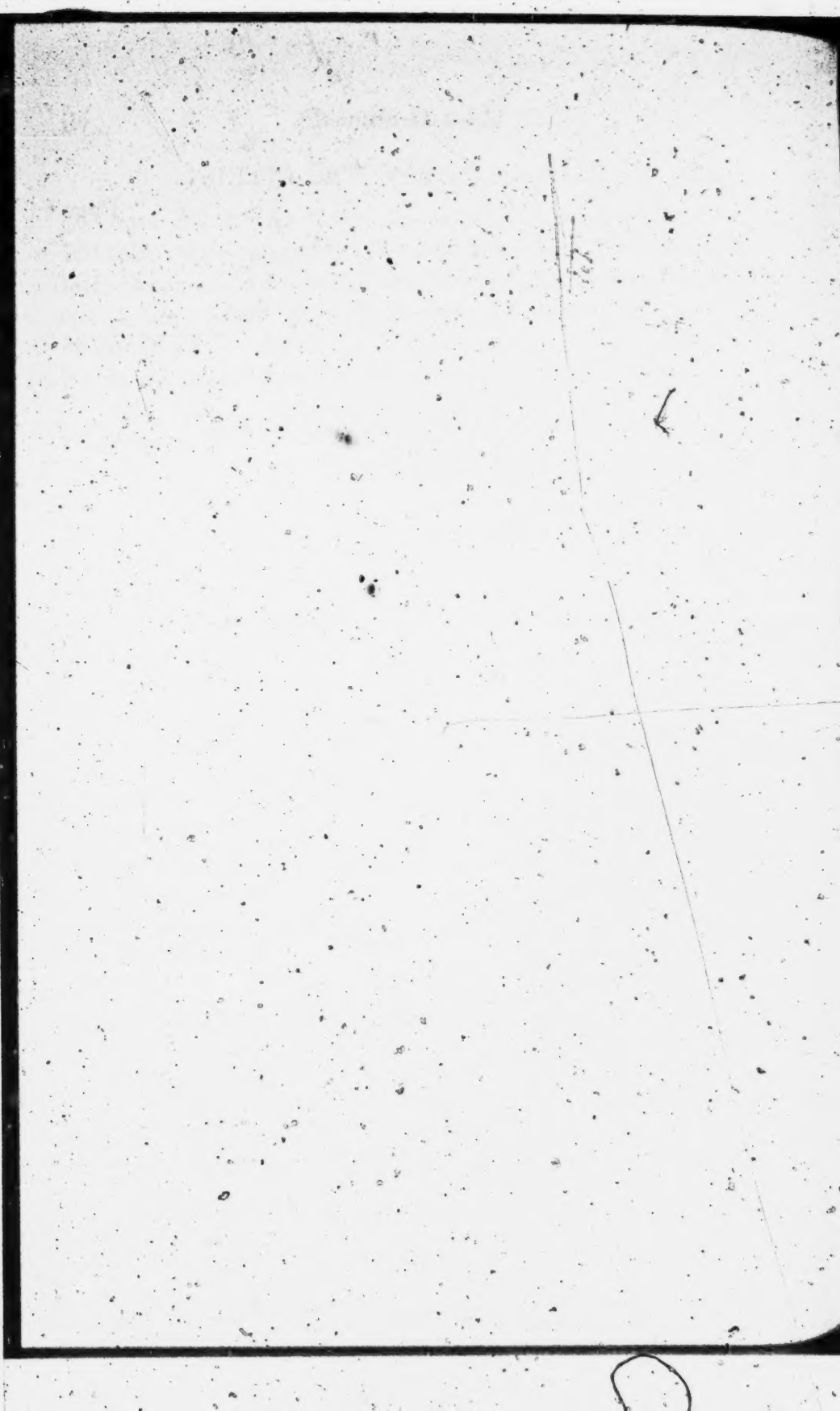

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

THE UNITED STATES OF AMERICA, *Appellant*,

vs.

SWIFT & COMPANY ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL., *Appellants*,

vs.

SWIFT & COMPANY ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION, *Appellant*,

vs.

SWIFT & COMPANY ET AL.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR SWIFT & COMPANY ET AL. AND ARMOUR & COMPANY ET AL., APPELLEES.

PRELIMINARY STATEMENT.

Three separate appeals have been taken from the decree of the Supreme Court of the District of Columbia entered

January 31, 1931 (R. 1060), which modified the consent decree of February 27, 1920, to the extent of permitting the appellees to manufacture and to deal at wholesale in the commodities enumerated in the fourth and fifth paragraphs thereof (R. 155-161 and 1060). All appellants seek a reversal of the amendatory decree, but they are not agreed as to the reasons advanced to obtain a reversal. The United States of America was a party to the decree of 1920 and it expressly admits both on the record and in its brief that the trial court had power, without the unconditional consent of the Government,* to modify the 1920 decree upon a proper showing of changed conditions (R. 387-389). The American Wholesale Grocers Association and the National Wholesale Grocers Association were not parties to the 1920 decree but were granted a limited right of intervention in this cause on November 5, 1921 (R. 174, 188), over the objection of the Government (R. 182). Both contend that the 1920 decree cannot be modified without the unqualified consent of the Government. All appellants contend that the proof of changes in conditions from 1920 to 1931 was not sufficient to justify the modification granted by the lower court.

Three separate briefs have been filed by appellants but there is only one record before the court and notwithstanding the divergent views of appellants, we shall reply to their three briefs in a single brief so as to avoid unnecessarily burdening the Court.

An attempt has been made by all appellants to inject into this appeal statements made in *ex parte* investigations of the appellees and other meat packers prior to 1920. There is no proof of such investigations in the record, but the missing evidence is supplied on appeal by references to the Congressional Record, Reports of Senate

*For convenience the United States of America, Appellant in 568 is hereinafter referred to as the Government, American Wholesale Grocers Association, Appellant in 569, is hereinafter referred to as the American Association, and National Wholesale Grocers Association, Appellant in 570, is hereinafter referred to as the National Association.

Committees, Reports of the Commissioner of Corporations, and the Report of the Federal Trade Commission on the Meat Packing Industry.

The limitations upon the purposes for which such references may be used are stated by this Court in *Stafford v. Wallace*, 258 U. S. 495. In that case this Court passed on the constitutionality of the Packers and Stockyards Act of 1921 (42 Stat. 159) and in its statement of the case set forth the meat packer investigations now invoked by appellants, but this Court said in its opinion at page 512:

> "We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees on Agriculture in Congress, but only to enable us to consider and discuss the Act whose validity is herein questioned in the light of the environment in which Congress passed it."

Applying this statement to the instant proceedings, futile must be the obvious endeavor to have this Court consider matter not in the record but imported into the briefs for the thinly veiled purpose of having that matter considered "in deciding the issues of fact" presented.

At page 25 of their brief Government counsel say that the purpose of the consent decree "must be determined upon the allegations of the Government's bill." We agree. The theory and purpose of the decree is clearly and comprehensively shown by the allegations of the petition pursuant to which the decree was entered (R. 1-23). Instead of pursuing the natural course of showing the theory and purpose of the decree by setting forth the allegations of this petition which is in the record, counsel industriously sought references to many sources beyond the record. This course suggests that counsels' motive may have been to convince this court that the charges of unlawful conduct made against the appellees prior to 1920 had some foundation

in fact, and this impression is confirmed by statements such as:

> "This court, in Swift & Company v. United States, 276 U. S. 311, in Note 1, pages 319 and 320, *names violations of law by the packers,* quotes the old case of Swift & Company v. United States, 196 U. S. 375, refers to a case in the District Court against Armour and Company, to the history of the packers contained in Stafford v. Wallace, 258 U. S. 495, to certain reports of Congress and to the report of the Federal Trade Commission on the Meat Packing Industry. *The facts so shown illustrate the character of the packers and establish that they have been law breakers throughout their existence.*" (American Association Brief, page 29.)

This statement takes us far beyond the realm of mere recitals of historical background. Here is a charge that proof exists of *facts* establishing long continued unlawful conduct by appellees. The statement is made on the basis of various *ex parte* proceedings of which there is no proof whatever in the record. The material used to sustain the charge of unlawful conduct was not and could not have been introduced in evidence. This is clearly established by the opinion of this Court in *United States v. International Harvester Corporation,* 274 U. S. 693, at page 703:

> "In support of its alternative contention that competitive conditions have not been established bringing about a situation in harmony with law, the Government relies in large measure upon various statements and tabulations contained in the report of the Federal Trade Commission, which was introduced in evidence over the objection of the International Company. But it is entirely plain that to treat the statements in this report—based upon an *ex parte* investigation and formulated in the manner hereinabove set forth—as constituting in themselves substantive evidence upon the questions of fact here involved, violates the fundamental rules of evidence entitling

> the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first hand knowledge of the facts, who are produced as witnesses and are subject to the test of cross-examination."

The appellants also refer to the decision of this Court in *Swift & Company v. United States*, 196 U. S. 375, as a part of appellees' history prior to 1920, but counsel for the intervener-appellants did not see fit to mention the fact that the decision in that case was based entirely on the pleadings and not on evidence. Neither do they refer to the fact that there was one and only one occasion prior to 1920 when there was an actual trial of charges of violation of the anti-trust laws by the appellees. In 1910 an indictment was returned in the District Court of the United States for the Northern District of Illinois against the principal officers and owners of Swift, Armour, and Morris. This indictment charged the defendants with violations of the anti-trust laws substantially similar to the charges now urged by counsel as so-called historical background. The defendants entered pleas of not guilty. The case was tried, and after the introduction of evidence of all of the acts and transactions set up in the indictment, the trial resulted in an acquittal (R. 67-68).

SUMMARY OF ARGUMENT.

I. The decree of February 27, 1920, does not settle property rights or adjudicate facts but is exclusively an injunctive decree (R. 153-167). This injunctive decree was modified on January 31, 1931, by the court which entered it to the extent of permitting the defendants to deal at wholesale in groceries and other commodities enumerated in the fourth and fifth paragraphs of the decree (R. 1061), and these appeals are prosecuted from said order of January 31, 1931. This modification of the decree was granted because proof of changes in conditions since 1920

established that there was no longer any necessity to enjoin the defendant meat packers from competing in the general food industry (R. 1039-59).

II. The Government did not move to dismiss the petitions for modification but filed answers thereto (R. 321); conceded the power of the court to modify the decree; and consented to modification upon a proper showing of changed conditions (R. 387-89 and 1042). All defendants to the suit in which the decree was entered, consented to modification (R. 1042).

III. The American Wholesale Grocers Association and the National Wholesale Grocers Association were permitted to intervene over the objection of the Government (R. 182) on November 1, 1921 (R. 187), though the final decree had been entered on February 27, 1920 (R. 153). Intervention was allowed only for the limited purpose of being heard and upon the express condition that the interveners should not "take control of the plaintiff's side of the proceeding". (R. 187-8)

IV. The interveners filed motions to dismiss the petitions of Swift and Armour for modification of the decree (R. 310, 313, 315 and 316). These motions were overruled by the lower court (R. 317-19), and interveners filed answers (R. 322, 334, 346 and 368). The interveners now assign the denial of their motions to dismiss as error (R. 122 and 123), and contend that the lower court did not have jurisdiction or power to modify the decree without an unqualified consent by the Government to the particular modification granted. The appellees submit first that this contention is not sound and second that the interveners do not occupy a position which enables them to advance such a contention.

V. Injunctive decrees are always subject to modification because of changed conditions regardless of the expiration of the time for an appeal or bill of review and in spite of an objection to modification by the party who obtained the injunction. A summary statement of the law on

this subject is found in the opinion of the Supreme Court of Pennsylvania in *Ladner v. Siegel*, 298 Pa. 487, 148 Atl. 699:

> "The modification of a decree in a preventive injunction is inherent in the court which granted it, and may be made, (a) if, in its discretion judicially exercised, it believes the ends of justice would be served by a modification, and (b) where the law, common or statutory, has changed, been modified or extended, and (c) where there is a change in the controlling facts on which the injunction rested."

VI. This power of a court of equity to modify injunctive decrees over the objection of a party, is likewise applicable to injunctive decrees entered by consent (*American Press Association v. United States*, 245 Fed. 91), but that question is not here involved because the Government requested the court to treat the 1920 decree as a judicial decree and consented to modification upon a proper showing of changed conditions (R. 387-9).

VII. The court also has power to modify the injunctive decree because of paragraph eighteenth thereof by which the jurisdiction of the court was retained "for the purpose of * * * the carrying out and enforcement of the decree" and also

> "* * * for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

In *Swift & Company v. United States*, 276 U. S. 311, this Court construed paragraph eighteenth, and held that motions to vacate the 1920 decree, though signed by only two of the parties to that decree, did not constitute a new suit but came within paragraph eighteenth.

VIII. In any event the interveners are not in a position to urge that the decree can not be modified without an unqualified consent by the Government to the modification

granted. The interveners are not parties to the suit. They were granted a limited intervention long after the entry of the decree of 1920 (R. 187). They obtained intervention by a representation that they desired to be heard and produce witnesses in opposition to any modification adverse to their interests (R. 186), and then endeavored to prevent a hearing (R. 310, 313, 315 and 316). Having failed in that attempt the interveners did not call a single witness, or even prove that any member of either of their organizations has an existing business that will be affected in any way by modification of the decree. The Attorney General advised the lower court of the Government's desire for a hearing, stating:

> "* * * because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the court. * * *" (R. 388).

The interveners in seeking to prevent such a hearing on the merits violated equity rule 37 which requires that intervention must be "in recognition of the propriety of the main proceeding," and violated the order allowing intervention which expressly imposed the condition that the interveners were "not to take control of the plaintiff's side of the proceeding" (R. 187).

IX. The order of January 31, 1931, should be affirmed because changed conditions have completely removed any danger of monopolistic control of the food industry by the defendants. The petition of 1920 alleged that the defendants had acquired a monopoly in the meat packing industry, and that the Government feared a monopoly by them in the general food industry. Upon that theory the court was asked to prohibit five large corporations from competing in the non-meat food industry. Subsequent events and changes in conditions have established, and all parties have admitted, that the meat packing industry is now highly competitive and that there is no monopoly therein. Sub-

sequent events and changed conditions have also removed any danger of monopoly in the food industry and established that the injunction against the selling of general foods by the defendants is no longer necessary.

A. In 1921 the defendant packers sustained operating losses aggregating $61,002,000 (R. 888a). Morris and Company lost $16,949,000, about one-third of its capital and surplus, in three years (R. 937) and on March 24, 1923, sold its physical properties and business to Armour and Company and discontinued business (R. 964). Armour and Company lost $39,339,000 in 1921 and 1922 (R. 937), and was refinanced in 1922 and changed from a corporation controlled by the Armour family into a public corporation, not so controlled, with 80,000 stockholders (R. 543). Wilson and Company was adjudicated a bankrupt in August, 1924, and its properties were subsequently acquired by a new corporation at a judicial sale (R. 558-9).

B. Since 1920 there has been a pronounced growth in both the volume of business (*infra*, p. 46), and in the earnings (*infra*, p. 52), of the competitors of Swift and Armour. During the same period the defendant packers have been unable to earn profits commensurate with the profits of their competitors, and have failed to effect any substantial increase in their volume of business. In 1929 their position with reference to the total production of meat and lard in the United States as estimated by the United States Department of Agriculture was—Swift 15.2 per cent, Armour 14.1 per cent, Wilson 4.3 per cent, and Cudahy 4.7 per cent (R. 816a).

C. Changes have also occurred in the marketing of livestock. Cooperative sales of livestock on public markets have increased from $37,419,935 in 1920 to $302,894,934 in 1929 (R. 403). Direct sales of livestock have increased to such an extent that 40 per cent of the hogs sold in 1929 were sold direct and never reached public markets (R. 401).

D. Market news has been the subject of radical changes and pronounced development. The petition of 1920 alleged that the ownership of market papers and journals gave the defendant packers peculiar and exclusive access to information of receipts and prices of livestock and enabled them to increase or decrease the flow of livestock to markets (R. 12). At the present time more than 2,400 Government employes are engaged in collecting market information and circulating it daily by 10,000 miles of wires, 90 radio stations, and the issuance of 5,000,000 mimeographed bulletins a year (R. 392). The prompt dissemination of market news now enables producers to select the best selling markets and enables packers scattered throughout the United States to select the best buying markets. As a result the livestock market is now a national market and not a local market and monopolistic control of livestock prices is not possible (R. 536, 659, 422).

E. Public livestock markets have increased in number from 50 in 1920 (R. 15) to 74 in 1929 (R. 818-20). In 1920 the markets were not regulated by any governmental agency but they are now thoroughly regulated and supervised by the Secretary of Agriculture under the Packers and Stock Yards Act adopted August 15, 1921. Offices are maintained at Washington and the principal livestock markets and a large staff of market supervisors, accountants, auditors and engineers are employed (R. 407). The packer buyer is subjected to daily observation and supervision by the Department of Agriculture (R. 409-10) and the rates which stock yard companies are permitted to charge are regulated and fixed by the Secretary of Agriculture (R. 412, *Tagg Bros. & Morehead v. United States*, 280 U. S. 420).

F. The petition of 1920 charged that the defendants had "eliminated competition in the meat products" (R. 17). There are now 998 separate competing meat packing concerns engaged in interstate commerce and regulated under the Packers and Stock Yards Act (R.

411) and also a large but unascertained number of intrastate meat packers, there being 27 such intrastate plants in the City of Detroit alone (R. 444). Numerous competitors of appellees testified that the packing industry is highly competitive and free from any monopoly and no witness testified to the contrary. After this proof had been introduced all parties to this cause entered into a stipulation that all meat packers in the United States owned and controlled independently of each other are in active competition with each other in the purchase of livestock and in the sale of the products thereof (R. 558). The four defendants are owned and controlled independently of each other, (R. 1110). This extensive and active competition in the packing industry has been brought about by natural causes and not by means of the restraints of the decree of 1920 and furthermore no injunctive provision of the decree directed against the packing industry has been disturbed or affected by the modification granted by the lower court.

G. The general food industry has also been the subject of revolutionary changes and a monopoly therein is now impossible. This is established by the undisputed evidence of such witnesses as Frederick S. Snyder, who has been connected with the food industry for forty-three years and was formerly chief of the Meat Division of the Food Administration (R. 467-8); Dr. Paul H. Nystrom, Professor of Marketing, School of Business, at Columbia University (R. 696); Harold H. Maynard, Professor of Marketing at Ohio State University (R. 703); and Fred E. Clark, Professor of Marketing at Northwestern University (R. 704).

The fact that the food industry cannot now be monopolized is so apparent that this Court said, in *Wolff vs. Industrial Court*, 262 U. S. 522, 538:

> "There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is

conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply * * * are countrywide, * * * and the danger from local monopolistic control less than ever."

There are 49,787 establishments engaged in the manufacture of food products (R. 389); the total retail food bill of the country is twenty-four billion dollars (R. 691) and there are more than 6,000 wholesale grocers and over 400,000 retail food stores (R. 519 and 773).

Regular chain grocery stores have increased from 15,000 with sales of $770,000,000 in 1920 to 60,000 stores with sales of $3,500,000,000 in 1929 (R. 567). These 60,000 chain grocery stores are owned by 900 separate corporations, and the 70 largest of the corporations own 48,699 stores, (R. 567).

One chain food organization, The Great Atlantic & Pacific Tea Company had 4,638 stores with sales of $230,420,618 in 1920 and 15,418 stores with sale of $1,053,692,882 in 1929 (R. 494). This concern now has 15 packing establishments under Federal inspection though it had none in 1920 (R. 533) and it has 53 general storage and shipping warehouses (R. 494), 35 bakeries (R. 495), 23 produce warehouses, 6 salmon canneries and other manufacturing establishments (R. 495). Its earnings have increased from $5,803,333 in 1921 (R. 496) to $26,219,631 in the year ended March 1, 1930 (R. 827).

Other large chain organizations have greatly increased the number of stores operated by them, their volume of business and their earnings since 1920. Their earning power is far in excess of the earning power of any of the defendants.

The enormous growth in the number and the volume of business of voluntary chain stores in the food industry has occurred during the last five years (R. 519). There are now in existence 551 voluntary chain organizations

with a total membership of 59,640 separate retail grocery stores (R. 510). One organization, the Independent Grocers Alliance of America, was created in 1926 (R. 762) and the organization now embraces 49 wholesale grocers with 87 wholesale establishments and 9,000 retail stores (R. 562).

At the present time 35 per cent of the total retail grocery business of the United States is controlled by 900 regular chain store organizations operating 60,000 retail stores (R. 519). Approximately 25 per cent of the total retail grocery business is done by the 60,000 retail members of the 551 voluntary chain organizations (R. 519). Therefore 60 per cent of the total retail grocery business of the United States is now in the hands of approximately 1,500 chain organizations, a large percentage controlled by a relatively few organizations.

The growth and development of manufacturers and wholesale distributors of food have also been very pronounced in the last few years. National Dairy Products Company was incorporated in December, 1923, and its sales in 1929 were $300,000,000 and it earned 7.19 per cent on sales (R. 842). The Borden Company increased its sales from $120,293,572 in 1920 to $328,466,989 in 1929, in which year it earned 6.21 per cent on sales (R. 851). The General Foods Corporation is the successor to the Postum Cereal Company and as a result of various acquisitions now handles 68 branded products (R. 854-856). Its sales have increased from $21,910,177 in 1920 to $128,036,791 in 1929, and in that year it earned 15.17 per cent on sales (R. 858).

There is no lack of food production in this country. On the contrary overproduction, largely due to inadequate distribution, is the present problem. Congress has sought to solve the difficulties of overproduction with legislation such as the Capper-Volstead Act (42 Stat. 398) and the Agricultural Marketing Act (46 Stat. 11). The latter statute created the Federal Farm Board and it is at least de-

batable whether this Federal agency, with an appropriation of $500,000,000 at its disposal, has been successful in controlling or stabilizing prices as to a comparatively few agricultural commodities. It is simply inconceivable that the four defendants with a background of losses of $61,000,000 in 1921, a reorganization in 1922, a forced sale in 1923, and a bankruptcy in 1924, could now enter the general food business and seriously threaten a monopoly therein or in any way crush or oppress the financially powerful corporations now engaged in the food industry.

X. The exclusion of the defendants as competitors in the general food industry would inflict an unnecessary injury to the public. The fact that the public in general is injured by a substantial restraint of competition in an essential industry is not reasonably debatable. "Lower prices or improved service are almost an inevitable result of an increased competition" (Dr. Paul H. Nystrom, R. 695).

The prohibition against the sale of general foods by the appellees is also unjust and inequitable to them under present conditions. The record shows beyond dispute that because of changes in conditions the appellees are being subjected to constantly increasing operating costs in their branch house and car route departments which can only be obviated by the handling of a diversified line of products. The maintenance of the appellees' distributing system is essential to the meat packing industry. The increase in the operating cost of this distributing system has been brought about in part by direct shipments of meats to the warehouses of chain organizations. The regular chains alone have increased the number of fresh meat departments operated by them from 1,200 in 1920 to 15,800 in 1929. The voluntary chains which have grown up in the last five years (R. 519) have approximately 28,000 stores with fresh meat departments (R. 512 and 517). Chain organizations purchase their meats through central offices and their direct

shipments to chain warehouses reduce volume in the appellees' branch houses (R. 656).

A further change of major importance affecting the appellees is found in the ever-increasing extent to which chain organizations are performing packing house operations. There are now 30 processing plants under Federal inspection operated by chains as compared with eight such plants in 1920 (R. 533), and there are now at least 83 chain store organizations which perform meat packing operations (R. 921-36).

The increase in motor truck transportation (R. 418) has enlarged the activities of small packers and also caused meat dealers to motor to large cities for their supplies and this development has accentuated the present difficulty of maintaining branch house and car route volume (R. 655 and 670).

In the endeavor to maintain branch house and car route volume under existing conditions the appellees have been compelled to solicit small orders formerly ignored by them. The size of Armour's branch house orders has decreased from 156 pounds per sales ticket in 1920 to 126 pounds per sales ticket in 1929 (R. 656). The size of orders in Swift's branch house and packing house markets has decreased from 117 pounds per sales ticket in 1923 to 93 pounds per sales ticket in 1930, and this has increased the expense of doing business from $.845 per hundred weight in 1923, to $.991 per hundred weight in 1930 (R. 958a). Swift's car route orders have decreased from 206 pounds per order in 1923 to 165 pounds per order in 1929 and the expense of doing business has increased from $.90 to $.95 per hundred weight (R. 958a). Its car route customers have increased from 65,000 in 1925 to 83,000 in 1929. Before 1925 orders for less than 100 pounds in car route territories were not acceptable (R. 665) but in 1929, 35 per cent of its car route orders were for less than 100 pounds each (R. 969-70).

The record shows beyond dispute that the appellees

will be enabled to effect economies of operation in branch houses and car routes by handling a diversified line of products (R. 474, 548, 694-5, 704). This is not denied by the Government but it contends that this method of doing business constituted a competitive advantage in 1920 and is also a competitive advantage today and that therefore the decree should not be modified. However, the reason for the prohibition of 1920 no longer exists. There is no monopoly in the meat packing industry and no danger that such a monopoly or a monopoly in the food industry can now be acquired by the defendants. That being true, an economical method of doing business should not be prohibited. Furthermore, the handling of a diversified line of products by the appellees will not give them any competitive advantage over other meat packers. All other meat packers are now free to engage in the same character of business and there are at least 140 of appellees' competitors now engaged in selling articles which are prohibited to the appellees (R. 919-20).

XI. Under present conditions the use of the defendants' refrigerator cars to transport commodities other than meats will not give them any unfair advantage over the wholesale grocers. The parties have stipulated and agreed that there is an ample supply of refrigerator cars for all who need them (R. 508). The interveners claim that the appellees' route or peddler cars will enable them to obtain quicker and more certain deliveries of groceries than the concerns engaged in the wholesale grocery business. The record shows that the refrigerator cars operated by appellees move on regular schedules in local freight trains without preferential treatment over any other type of car (R. 665 and 675). The Interstate Commerce Commission has decided in *National Wholesale Grocers Association v. Director General, et al.*, 62 I. C. C. 375, that the practice of carriers in permitting the meat packers of the United States to load groceries in their peddler cars does not result in undue prejudice to the wholesale grocers.

Furthermore, the construction of hard roads and the growth of motor truck transportation (R. 418) have removed any possible transportation advantage which the appellees may have had in 1920. The business of the wholesale grocer is particularly adapted to the use of the motor truck in making deliveries and they now have power to expedite their deliveries to any extent they desire. The appellees are now subjected to the payment of penalties to carriers because of their inability to obtain an even and adequate volume of business in car route territories. Grocery items may be used in making up the minimum tonnage or revenue requirements in three of the freight classification territories of the United States, but the handling of those items in such territories will only have the effect of reducing penalties and will not have the effect of reducing freight charges paid by appellees on grocery items.

XII. There is no foundation in fact for the claims of alleged contumacious conduct and violation of Anti-Trust Laws by the appellees. The appellees have not violated the decree of February 27, 1920. Nor have they repeatedly endeavored to destroy the decree as is charged by the interveners. They sought openly, in proper judicial proceedings, to have the decree vacated, their motions being passed on by this Court in *Swift & Company v. United States,* 276 U. S. 311. The appellees made a full disclosure to the trial court of all relevant facts within their knowledge. Reciprocity in buying and shipping which is discussed in the appellees' brief is common to all industries and carriers and has never been held to be illegal by any court. The alleged violations of the Anti-Trust Laws by appellees consisted of three minor instances, unknown to appellees' officers, and characterized by the lower court as sporadic, in view of the nation-wide extent of the appellees' business. As the trial court found appellees' officers have expressly forbidden unfair practices (R. 1051). The few instances complained of are trivial, particularly in

view of the announcement of the Attorney General at the beginning of the hearing that he intended to present to the court "every justifiable argument and fact which tends to the conclusion that the decree should not be modified" (R. 1052).

There is no longer any reason which requires that competition in the general food industry shall be restricted by the exclusion of the defendants as competitors, and in the public interest, and in justice and equity to the defendants, the order of January 31, 1931, should be affirmed.

ARGUMENT.

PART I: THE POWER OF THE COURT TO MODIFY THE DECREE.

I. The Government Consented to a Modification of the Consent Decree Upon a Proper Showing of Changed Conditions.

When the petitions for modification of the consent decree were filed by the appellees, the Government as a party to the decree could have unconditionally consented to the modification requested, and had that been done, there would have been no litigation. Instead of thus consenting, the Government could have expressly refused to consent to modification, and had that been done there would have been presented the question of whether or not an injunctive decree entered by consent can be modified by the court which entered it, over the objection of a party, on the ground of changes in conditions rendering the continuance of the decree unnecessary. The Government did not elect to pursue either of these courses but filed an answer demanding proof of the allegations of the petitions for modification (R. 321) and then requested the court to treat the decree as a purely judicial decree, to be modified if the evidence presented justified modification upon the application of accepted principles of equity (R.

387-9). In taking this position the Government in effect agreed that if the allegations of the petitions for modification were proved, the decree should be modified. Had the Government been of the opinion that the allegations of the petitions did not justify modification upon accepted principles of equity, and had that view been sound, there would have been no necessity for the hearing and the voluminous record now before this Court. The question of whether or not the allegations of the petitions justified modification was a "point of law arising upon the face of the bill" and under Equity Rule 29 such a contention should have been presented by motion to dismiss on the ground of the insufficiency of the facts pleaded.

In the opening statement made in this cause on behalf of the Government, Mr. Teegarden advised the court of the Government's position as to the modification requested by appellees by reading to the court extracts from a letter of the Attorney General of the United States to the President of the Senate on July 11, 1930:

> "With respect to the attitude of this Department toward the petitions of Armour and Company and Swift & Company for modification of the Consent Decree, I have declined to entertain any suggestion that I stipulate for any modification of this decree. I have taken the position that the decree, although entered by stipulation and consent, is a judicial decree to be dealt with as such; that either by virtue of the clause at the foot of the decree reserving jurisdiction, or by virtue of general equity powers, or both, the Court has jurisdiction to entertain a petition for modification on a proper showing; that because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the Court, and no modification of the decree made unless on such a judicial hearing and without any stipulation by, or consent from, the United States the evidence presented justifies, upon application of accepted principles of law and equity, some modification." (R. 387-388)

On the following day the trial court referred to the above-quoted statement of the Attorney General and the following occurred:

> "The Court: I think I understand fully the Government's position, and as I read this, it concedes that the Court has jurisdiction, upon a proper showing, to modify the decree.
> "Mr. Teegarden: That is our very frank position, Your Honor." (R. 389)

The consent of the Government to modification of the consent decree upon a proper showing is further amplified in the brief filed by the Government in the trial court, which is quoted in the opinion of the court rendered January 5, 1931:

> "The decree is a judicial decree, and to be dealt with as such. The fact that it originated in a consent arrangement does not give any greater or less effect to the attitude of the Attorney General on the question of modification, than if the decree was entered after litigation. The question whether there should be a modification is a judicial question to be decided on the law and the evidence. Arguments advanced for or against the application by any of the parties including the Government are to be weighed by the Court and given the same consideration, no more and no less, than they would if the decree had followed litigation." (R. 1042)

The District Court, after quoting the foregoing from the Government's brief, said in its opinion:

> "I agree with the Government's position on this point, for a decree of injunction differs from a judgment at law, and while it is a final adjudication of the rights and equities of the parties at the time it is entered, the remedy by injunction is subject to modification upon equitable considerations which may thereafter arise due to subsequent changes in conditions." (R. 1042-3)

The 23rd finding of fact made by the District Court is—

> "All parties consenting to the decree entered herein February 27, 1920, concede the jurisdiction and power of this Court to modify said decree." (R. 1114)

At page two of the Government's brief filed in this Court the following statement appears:

> "The Government has conceded that the power of the Court to modify the consent decree is the same as its power to modify a decree entered after litigation."

The Government has definitely and repeatedly waived any objection to modification of the decree on the ground that it is a consent decree. There is no doubt that such a waiver is effective and binding. In *Hollins v. Brierfield Coal and Iron Company*, 150 U. S. 371, this Court said at page 380:

> "Defenses existing in equity suits may be waived, just as they may in law actions, and when waived, the cases stand as though the objection never existed. Given a suit in which there is jurisdiction of the parties, in a matter within the general scope of the jurisdiction of the Courts of Equity, and a decree rendered will be binding, although it may be apparent that defenses existed which, if presented, would have resulted in a decree of dismissal."

The Government having requested the court to pass upon the merits of the petitions for modification, the interveners, who obtained a limited right of intervention long after the decree was entered cannot take a contrary position (R. 188).

When the Grocers Associations were permitted to intervene, the court below expressly provided in its order that they "be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited pur-

pose stated in their petition" (R. 187). And in its opinion in the instant proceeding the court said:

> "* * * I do not think that the interveners have such a position in this case as to entitle them to prevent modifications by the Court, when the power to make them is conceded by the parties to the Decree." (R. 1043).

The intervener-appellants contend that the Government could not by consent confer jurisdiction on the court to treat this decree as a judicial decree because of the rule of law that jurisdiction cannot be conferred by consent. That rule has no application in this case. The court undoubtedly had jurisdiction of the persons and of the subject-matter and the amendatory order was not of a type which was beyond the limits of the power of the court under existing law.

II. The Court Has Power to Modify the Decree of 1920 Upon Accepted Principles of Law and Equity.

A. INJUNCTIVE DECREES ARE ALWAYS SUBJECT TO MODIFICATION BECAUSE OF CHANGED CONDITIONS REGARDLESS OF THE EXPIRATION OF THE TIME FOR TAKING AN APPEAL.

There are, of course, numerous final decrees entered by courts of equity which serve their purpose when executed and cannot thereafter be questioned except by means of an appeal taken within the time permitted by law or a bill of review. This is true of all decrees which settle and determine property rights. An entirely different situation exists in the case of injunctive decrees. An injunctive decree is a continuing decree. It looks entirely to the future. In the language of this Court in *Swift & Company v. United States*, 276 U. S. 311, 326, "A suit for an injunction deals primarily not with past violations but with threatened future ones." Because an injunctive decree operates in the future, it is necessarily subject to future changes in

either law or facts which render the continuance of the decree unnecessary and prejudicial. The decisions uniformly recognize the power of courts of equity to vacate or modify final injunctive decrees at any time on the ground of changed conditions.

In *Lowe v. Prospect Hill Cemetery Association,* 75 Neb. 85, 106 N. W. 429, a perpetual injunction had been issued, restraining the defendant from using certain land for burial purposes. Such injunctive decree had been previously affirmed on appeal (58 Neb. 94; 78 N. W. 488). Several years thereafter a motion was filed to modify or vacate the permanent injunction and it was contended that the court had no power to vacate or modify its final decree after the term at which it was entered. The Supreme Court of Nebraska said:

> "We are satisfied that where a final decree has been rendered allowing a permanent injunction, as in this case, the court granting it possesses the undoubted power to either vacate or modify when the circumstances and situation of the parties have so changed as to render such action just and equitable, and this even though the statute may not have specifically provided for the exercise of such power."

In *Larson, et al. v. Minnesota Northwestern Electric Railway Co.,* 136 Minn. 423; 162 N. W. 523, the court had entered a final decree enjoining the defendant railroad company from occupying a city street with its tracks. At a subsequent term the court below modified the final decree because of changes in conditions since its entry. The court said in its opinion:

> "The modification of this judgment was a proper exercise of the discretion of the court. A judgment ordering a perpetual injunction is not above the power of the court to ever alter or amend. Facts may arise after the judgment is rendered of such a nature that the judgment ought not to be executed,

> and in such event, modification of the judgment may be a matter of right. Weaver v. Mississippi & Rum River Boom Co., 30 Minn. 477, 16 N. W. 269; Colstrum v. Minneapolis & St. Louis Railway Co., 33 Minn. 516, 24 N. W. 255."

In the case of *Emergency Hospital v. Stevens,* 146 Md. 159; 126 Atl. 101 the Court of Appeals of Maryland had precisely the same question before it and came to the same conclusion.

In *Ladner v. Siegel,* 298 Pa. 487, 148 Atl. 699, the court granted an injunction restraining the use of a building in a residential district for garage purposes and this injunctive decree was affirmed on appeal (293 Pa. 306, 142 Atl. 272). Subsequently the defendant was adjudged guilty of contempt for violating the injunction and on appeal the contempt order was affirmed (296 Pa. 579, 146 Atl. 710). Thereafter the defendant applied for a modification of the final injunctive decree so as to permit the use of the building for the storage of automobiles owned by tenants of nearby apartments. In affirming an order granting the modification requested, the Supreme Court of Pennsylvania said that when the decree was entered it was the law of the State of Pennsylvania that the operation of a public garage in an exclusively residential district was a nuisance *per se.* This rule of law was later changed because the increased use of the automobile as a means of transportaiton rendered the employment of property in business and residential districts for garage purposes a necessity. Because of this change in conditions and in the law, the Supreme Court of Pennsylvania upheld the modification of the final injunctive decree and said in its opinion:

> "The modification of a decree in a preventive injunction is inherent in the court which granted it, and may be made, (a) if, in its discretion judicially exercised, it believes the ends of justice would be

served by a modification, and (b) where the law, common or statutory, has changed, been modified or extended, and (c) where there is a change in the controlling facts on which the injunction rested."

The plaintiffs in *Ladner v. Siegel, supra,* were the owners of property adjoining the defendant's proposed garage and contended that the final decree could not be modified because it created in them a property right protected by the 14th Amendment to the Federal Constitution. In response to this contention the Supreme Court of Pennsylvania said:

"An injunction decree does not create a right; it protects the right of the owner to the enjoyment of his property from injurious interference by the uses of other land. The right protected is an attribute of property existing through the application of common-law principles. A decree preventing its injury does not give to the complaining party a perpetual or vested right either in the remedy, the law governing the order, or the effect of it. He is not entitled to the same measure of protection at all times and under all circumstances. A decree protecting a property right is given subject to the rules governing modification, suspension, or dissolution of an injunction. The decree is an ambulatory one, and marches along with time affected by the nature of the proceeding."

Ladner v. Siegel, supra, is reported in Volume 68 of American Law reports at page 1172 with annotations discussing the reported cases at page 1180. With respect to the power of a court of equity to modify the terms of a permanent injunction the annotator says:

"The cases seem to be uniform in holding that the Court which rendered a decree for a permanent or perpetual injunction may open or modify the same where the circumstances and situation of the parties are shown to have so changed as to make it just and equitable to do so."

The power of a court of equity over an injunctive decree exists as long as the decree itself exists. The words "perpetual" and "permanent" applied to a strictly prohibitory decree are misnomers. Text writers have recognized this fact. There appears in Vol. 23 of Michigan Law Review at page 382, an article entitled, "Are All Permanent Injunctions Temporary?" The author says in part:

> "an injunctive decree should not be conclusive when there have been material changes in the conditions upon which the injunction was based. Neither at law nor in equity does the principle of *res judicata* prevent the showing of changed relations due to facts which have subsequently transpired. The only peculiarity of an injunctive decree is that it *purports* to conclude future relations between the parties. But it should be understood as concluding future action only so long as the material facts remain the same. * * * Why should the restraining hand of an injunction extend into the indefinite future, prohibiting an act when the necessity for the prohibition has ceased?"

B. INJUNCTIVE DECREES ENTERED BY CONSENT ARE ALWAYS SUBJECT TO MODIFICATION BECAUSE OF CHANGED CONDITIONS.

It is contended, however, that a different rule prevails in this case because the decree of February 27, 1920, is a consent decree. As heretofore stated, the question of whether or not a consent decree can be modified on the ground of changed conditions in spite of an objection to such modification by one of the parties, is not before this Court. The Government does not object to modification on the ground that the decree is a consent decree. It has specifically requested the court to treat it as any other judicial decree. However, even if the contrary were true the amendatory decree of the lower court would be valid because as a matter of law an injunctive decree, even though entered by consent, can be modified because of changed conditions, notwithstanding an objection to modification

by a party to the decree. Counsel for the National Association assert the contrary and cite numerous authorities to support their position at page 9 of their brief. In selecting these authorities counsel overlooked the fact that the consent decree herein is an injunctive decree. It is, of course, true that a consent decree which settles and determines property rights can not be modified on the ground of changed conditions without the consent of all parties. Counsel carefully refrained from stating the facts involved in any of the cases relied on by them. We show in a foot note that each and every case cited involved a consent decree, which settled and determined property rights.*

There are several decisions of the Federal Courts to the effect that final injunctive decrees entered by consent may be modified because of changed conditions even though a party objects to modification.

In *American Press Association, et al, v. U. S.*, 245 Fed. 91 (7th C. C. A.), the court modified an injunctive consent decree more than 5 years after the entry thereof, though the United States, one of the parties to the decree, opposed the request for modification. On August 3, 1912, the Government instituted a suit in equity against the American Press Association, the Western Newspaper Union and others to enjoin threatened violations of the Sherman Anti-Trust Law. On the same date the District

*City of Des Moines v. Des Moines Water Co., 218 Fed. 939, 230 Fed. 570 (consent decree fixing the amount of a condemnation award); Karnes v. Black, 185 Ky. 410 (consent order dismissing a suit to recover an interest in a decedent's estate); Horning v. Saginaw Circuit Judge, 161 Mich. 413 (consent decree to pay $6,000); Lentz v. Lentz, 194 N. C. 673 (consent decree for the payment of lump sum alimony); First National Bank v. Mitchell, 191 N. C. 190 (consent decree directing the sale of land to pay debts); Edney v. Edney, 81 N. C. 1 (consent decree directing sale of property and disposition of proceeds); Stites v. McGee, 37 Ore. 574 (consent decree fixing amounts of water rights); Outlaw v. Barnes, 118 S. C. 189 (consent decree for partition); Morris v. Peyton, 29 W. Va. 201 (consent decree for the payment of money); Seiler v. Union Manufacturing Co., 50 W. Va. 208 (consent decree directing the sale of property); McGraw v. Traders National Bank, 64 W. Va. 509 (consent decree providing for the redemption of bonds); Bank of Glade Springs v. McEwen, 160 N. C. 414 (consent decree directing sale of property and disposition of proceeds).

Court entered a consent decree which permanently restrained the Western Newspaper Union—

> "(a) From combining or attempting to combine with the American Press Association, either *by purchase,* stock ownership, or in any other manner; * * * (c) from selling any of its products or services at less than a fair and reasonable profit, or at cost, or less than cost, with the purpose or intent of injuring or destroying the interstate trade and commerce of the American Press Association or of any other competitors."

On May 9, 1917, the American Press Association filed a petition in the original suit praying for a modification of this injunction on the ground of changed conditions. Evidence heard by the District Court showed that because of changed conditions in the stereotyped plate business, the American Press Association was losing money at the rate of $3,000 a month. The company desired to discontinue business and asked that the consent decree be modified so as to permit a sale of its business as a going concern, to its only competitor, the Western Newspaper Union. The modification thus sought was directly contrary to the provision of the consent decree which perpetually enjoined the Western Newspaper Union from combining with the American Press Association "either by purchase, stock ownership or in any other manner." The Court of Appeals held that the consent decree should be modified because of changed conditions and that the parties should be permitted to do that which was expressly prohibited by the consent decree entered five years before. The court said at page 93:

> "Since the outbreak of the world war there has been an increasing scarcity of print paper, and mounting prices. Few new country newspapers are being started; many have reduced their sizes; quite a number have quit. This condition brought the American

Press Association's plate business to a loss of over $3,000 a month, which is progressively increasing, and has also made it impossible for that company to build a ready-print business to help bear the overhead. The directors have decided to wind up the plate business as speedily as possible, whatever may be the outcome of this proceeding.

* * * * * * * * * *

If it were not for provision (a) of the decree, and the law back of it, these two companies might get together and fix a price that would provide a reasonable profit to the American company and an unreasonable one to the Western. For the newspapers, and through them the public, to pay for the profitable operation of an inefficient concern is an injury. And a combination to that end would be an unreasonable restraint of trade. That course can not be pursued. And, because it can not, the American company is forced to go out of the plate business. No decree can stop that. And after the American company quits, if the Western is left alone in the field, the ultimate situation of the country newspapers would be the same whether the plant be scrapped or sold as an integer. Neither the decree nor, in our judgment, the Sherman Law, prevents the Western from buying the scraps piece-meal. * * * If it be permitted to buy the integer, it would save the expense of reorganization. If the plant be scrapped, two injuries result: One to the public from the destruction of a usable and useful plant; the other to the stockholders of the American Company.

As to the first, a law designed to shield the public from injury should not be construed to compel the public to suffer an injury. As to the second, the Sherman Law, in our opinion, does not require the stockholders of a company, even a company that was a self-confessed wrongdoer in 1912, to sustain a loss in 1917 arising without wrongdoing, if that loss can be prevented without injury to the public. Injury can be prevented, we believe, by attaching to the permission to buy the plant as a going concern a condition which should be read in the light of provision (c) of the injunction."

Counsel for the American Association at page 17 of their brief attempt to distinguish the decision in the *American Press Association case* on the ground that the original decree "merely required enforcement in order to accomplish what the defendant in the original suit desired and sought." The granting of permission to do an act expressly prohibited by the original decree can not properly be characterized as "enforcement". The enforcement which counsel has in mind was accomplished by imposing a condition on the permission granted, as is stated in the last sentence quoted from the Court's opinion.

Counsel for the National Association seek to distinguish the *American Press Association case* on the ground that the power to modify without consent was not discussed in the court's opinion. *Webster v. Fall*, 266 U. S. 507, 511, is relied upon to establish that questions "which merely lurk in the record" are not to be considered as having been decided. However, the question of the power of the court to modify the consent decree over the objection of the Government, was the only point involved in the *American Press Association case* and certainly did not "lurk" in the record.

The District Court in this case drew, among others, the following conclusions of law:

> "3. This Court has inherent power to modify its said injunctive decree in such respects as the Court find justified in the public interest and in justice to the defendants.
>
> "4. The consent of the United States and all other original parties who consented to the entry of said Decree is not necessary to the exercise of the Court's aforementioned power to modify." (R. 1114)

The Government neither excepted to (R. 1115) nor assigned error upon these conclusions. (R. 1118-20)

The Federal Courts which have had occasion to pass upon the question have uniformly held that consent de-

crees entered in anti-trust proceedings may be modified upon a proper showing of changed conditions even if the Government expressly refuses to consent to modification. *United States v. New York, New Haven & Hartford R. R. Co. et al,* D. C. S. D. of N. Y. Equity Cause 11,301 (not reported). *U. S. v. Discher, et al.,* 255 Fed. 719, D. C. S. D. N. Y.; *U. S. v. Dupont De Nemours & Co., et al.,* 273 Fed. 869, D. C. D. of Del. See also *Marietta Chair Co. v. Henderson,* 121 Ga. 399, 49 S. E. 312.

C. THE COURT ALSO HAS POWER TO MODIFY THE 1920 DECREE BECAUSE OF THE PROVISIONS OF PARAGRAPH EIGHTEENTH THEREOF.

The power and jurisdiction of the court below to entertain the petitions for the modification of the consent decree are established beyond any question by the waiver of the Government and the decisions heretofore discussed. Even if this were not true, the lower court had power to entertain the petitions for modification solely on the ground of the provisions of paragraph Eighteenth of the decree of February 27, 1920, and the decision of this Court with reference thereto. Paragraph eighteen of the consent decree provides—

> "That jurisdiction of this cause be, and is hereby, retained by this court *for the purpose of* taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree *and for the purpose of* entertaining at any time hereafter any application which the parties may make with respect to this decree." (Italics ours.)

This paragraph shows that the court retained jurisdiction for two separate and distinct purposes. The italicized phrase "for the purpose of" is repeated. The court retained jurisdiction, first, "for the purpose of * * * the carrying out and enforcement of this decree", and second, "for the purpose of entertaining at any time hereafter

any application which the parties may make with respect to this decree."

Among the District Court's conclusions of law there will be found these:

> "2. This Court has power in virtue of the provisions of Paragraph Eighteenth of its Decree entered herein February 27, 1920, to modify said Decree in such respects as the Court finds justified in the public interest and in justice to the defendants."
>
> "5. The provisions of Paragraph Eighteenth of said Decree constitute consent by all of the parties that the Court may entertain at any time any application for modification of the Decree and enter its order thereon." (R. 1114)

The Government neither excepted to (R. 1115) nor assigned error upon these conclusions (R. 1118-20). Indeed, as hereinbefore shown, the Attorney General in his statement read to the District Court said:

> "I have taken the position that the Decree, although entered by stipulation and consent, is a judicial decree to be dealt with as such; that either by virtue of the clause at the foot of the decree reserving jurisdiction, or by virtue of general equity powers, or both, the Court has jurisdiction to entertain a petition for modification on a proper showing * * *." (R. 388)

Paragraph eighteenth of the consent decree was construed by this Court in *Swift & Company v. United States*, 276 U. S. 311, and the opinion of this Court in that case disposes of the contention that the language of paragraph eighteenth is not sufficiently broad to authorize the petitions for modification. In the *Swift case* this Court passed upon the motions of the present Appellees to vacate the consent decree on the ground that it was void. In considering the question of whether an appeal from an order denying the motions came within the provisions of the Expediting Act, this Court held that it was unneces-

sary to determine whether motions to vacate a decree in an anti-trust proceeding constituted a distinct and separate suit beyond the scope of the Expediting Act, because the motions to vacate came directly within the provisions of the above quoted paragraph eighteenth of the decree. The Court said at page 322:

> "Swift and Armour answer that the motions to vacate the consent decree are not subject to the provisions of the Expediting Act because they are not a part of the suit filed February 27, 1920, under the Anti-trust Act, but constitute a new suit. Compare Stevirmac Oil & Gas Co. v. Dittman, 245 U. S. 210. The argument is that the original suit ended with the entry of the consent decree, or at all events, at the expiration of the term, or at the end of the 60 days from the entry of the decree allowed by the Expediting Act for an appeal. We need not enquire whether an independent suit to set aside a decree entered under the Anti-Trust Act is subject to the provisions of the Expediting Act. The consent decree provided by paragraph Eighteenth for 'entertaining at any time hereafter any application which the parties may make with respect to this decree.' Swift and Armour made these motions to vacate in the original suit; they arose out of the three proceedings for intervention filed after entry of the consent decree; and they were entitled in the original cause."

Counsel for the National Association contend (brief page 12) that in construing the words "the parties" in the last line of paragraph eighteenth, the definite article "the", being used before a plural noun, should be construed to mean "all the parties". A complete answer to this contention is found in the opinion of this Court in *Swift & Company v. United States*, 276 U. S. 311. This Court decided that motions to vacate the consent decree filed by only two of the parties to that decree were directly within that portion of paragraph eighteenth providing that jurisdiction be retained for the purpose of

"entertaining at any time hereafter any application which the parties may make with respect to this decree." The court held that this language was sufficiently broad to permit two of the parties to the decree to apply for a complete vacation of the decree. If the court has power under paragraph eighteenth to entertain motions made by two parties to vacate the decree, it certainly also has power thereunder to entertain motions for the modification of the decree filed by the same parties.

III. The Intervener-Appellants Were Permitted to Intervene for a Limited Purpose Long After the Decree of 1920 Was Entered and Are Not in a Position to Urge that the Decree Cannot be Modified Without an Unconditional Consent by the Government.

The consent decree was entered on February 27, 1920 (R. 167). On September 10, 1921, the American Association (then known as Southern Wholesale Grocers Association R. 190) filed a petition for leave to intervene (R. 170). On the same date an order was entered granting leave to intervene and a petition in intervention was thereupon filed (R. 174-175). On September 19, 1921, a similar petition for leave to intervene was filed by the National Association (R. 179). The petition of September 10, 1921, was filed and the order of that date permitting intervention was entered without notice to the Government or the defendants and on September 24, 1921, the Government filed a motion to set aside and vacate the order which granted intervention (R. 182). On October 13, 1921, prior to the hearing of this motion to vacate, the American Association filed an amended petition in intervention (R. 183).

A. THE INTERVENER-APPELLANTS OBTAINED LIMITED INTERVENTION BY MEANS OF REPRESENTATIONS THAT THEY DESIRED TO BE HEARD AND TO PRODUCE WITNESSES TO TESTIFY REGARDING ANY MODIFICATION OF THE CONSENT DECREE, ADVERSE TO THEIR INTERESTS.

The amended petition in intervention filed by the American Association on October 13, 1921, alleged that the interveners had been informed and believed that the Department of Justice had prepared a motion to modify the decree of February 27, 1920, and that the Department intended to conduct a hearing before an Interdepartmental Committee with reference thereto and further alleged:

> "Interveners are advised, and being so advised, allege that the said board before which it is proposed to grant interveners a hearing, is a non-judicial board, with no power, authority or jurisdiction to hear or decide the rights of these interveners; that said board could not subpoena or swear witnesses, and that only in this court and cause can the facts necessary to a proper determination of the issues herein be adduced, and interveners here and now offer at such time and place as the court may set, to produce witnesses who will testify to the facts, material and necessary, for the court to know before determining what modification, if any, should be permitted of said decree. The proposal of the Department of Justice to grant the form of a hearing as aforesaid to interveners, and to determine for itself by an agreement with the defendant what modification shall be made in said decree, denies interveners that due process of law and that hearing which they are entitled to have, and which they can not obtain except before this Court and in this cause." (R. 186)

On November 1, 1921, the District Court rendered its decision on the Government's motion to vacate and set aside the order of September 10, 1921, permitting intervention. The Government's motion was overruled, but the court in its opinion clearly and definitely limited the scope of the intervention permitted by stating:

"Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it * * *." (R. 187).

On November 5, 1921, the District Court entered an order allowing the National Association to intervene under the same limitations (R. 188) and a petition in intervention was filed by the National Association on November 8, 1921 (R. 189).

There are two types of intervention in equity suits, namely, general intervention and limited intervention. In general intervention the intervener becomes a party to the suit for all purposes. Courts frequently refuse to permit a general intervention, and allow a limited intervention on certain conditions or for a specific purpose (*Florida v. Georgia*, 17 How. 478, 495; *Leary v. United States*, 224 U. S. 567, 576; 21 Corpus Juris, pp. 341 and 345).

In this case the court obviously could not have permitted a general intervention. The petition for leave to intervene was filed more than a year and a half after the entry of the final decree. Intervention after final decree is very unusual and is seldom permitted even in courts of equity (*United States v. Northern Securities Company*, 128 Fed. 808, 810, C. C. S. D. Minn.; *Caldwell v. Guardian Trust Company*, 26 Fed. (2d) 218, 222, 8th C. C. A.; 21 Corpus Juris, page 345).

B. THE INTERVENERS HAVE REPEATEDLY ENDEAVORED TO PREVENT A HEARING ON THE MERITS OF THE PETITIONS FOR MODIFICATION.

On April 2, 1930, the appellees filed their amended petitions to modify the consent decree on the ground of

changes in conditions since the decree was entered in 1920 (R. 200 and 255). On April 12, 1930, both the American and the National Associations filed motions to dismiss the petitions for modification (R. 310, 313, 315 and 316), and on the same date the Government filed answers to the petitions for modification (R. 321). Inadvertently the Government incorrectly states in its brief, at page 8, that its answers were not filed until after the court had overruled the interveners' motions to dismiss. The Government's answers were filed on April 12, 1930 (R. 321), and the court's opinion overruling the interveners' motions to dismiss was rendered June 28, 1930, and the answers previously filed by the Government are quoted in this opinion (R. 317).

In filing motions to dismiss the petitions for modification, the interveners acted contrary to the representation made by them in order to obtain intervention. They sought and obtained intervention by means of a representation that they wished to be heard and to produce witnesses to testify to facts relating to any modification of the decree adverse to them (R. 186) and after thus obtaining intervention endeavored to prevent a hearing on the merits by means of motions to dismiss. The Government desired a hearing, and contrary to the court's order allowing intervention the interveners sought "to take control of the plaintiff's side of the proceeding" (R. 187), and to prevent the hearing which the Government wanted.

The trial court overruled the interveners' motions to dismiss the petitions for modification (R. 317-319) but the interveners continued in their attempts to prevent a hearing on the merits. When the first witness was called by appellees the National Association tried to prevent the introduction of any testimony by interposing objections based on the same grounds as were advanced in its motions to dismiss (R. 382-387) and did this notwithstanding the fact that counsel for the Government had previously

admitted the power of the court to modify the decree upon a proper showing and had presented to the court a written statement from the Attorney General of the United States stating in part:

> " * * * because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the court * * *." (R. 388)

The effort to prevent the introduction of any evidence failed and a lengthy hearing followed but the interveners did not call a single witness. They did not even prove how many of their members are engaged in the wholesale grocery business or that there is any member of either Association having an existing business which will be injured or affected by the modification of the decree. No witness is identified as belonging to or having any connection with the intervening Grocers Associations, nor is there a word of evidence showing any interest of interveners or any of their members in the maintenance of the 1920 decree. At the conclusion of the hearing the interveners having offered no testimony excused their failure to carry out the representations upon which they secured intervention, by stating that any evidence they might offer would only be cumulative to that introduced by the Government (R. 807).

Having failed to prevent a hearing in the trial court the interveners now seek to prevent this Court from passing on the merits of the question of whether or not the decree of January 31, 1931, should be affirmed. Both interveners have assigned as error the action of the trial court in refusing to sustain their motions to dismiss (R. 1120-23) and maintain—contrary to the position taken by the Government—that the 1920 decree cannot be modified without an unconditional consent by the Government.

The Government having consented that the court may act and having requested the court to pass upon the merits

of the petitions for modification, the interveners have no right to question the power of the court contrary to the position of the Government. Doing so violates the representation by which they obtained intervention and the condition upon which intervention was granted them. Moreover, their position would be the same even if the court had not definitely said that they were not to take control of the plaintiff's side of the proceeding.

In *Central Trust Co. v. McGeorge*, 151 U. S. 129, a suit was instituted in the Circuit Court of the United States for the Western District of Virginia, although neither the plaintiff nor the defendant was a resident of that district. The defendant did not plead its exemption from being sued in that district but filed an answer to the bill of complaint. Thereafter, certain stockholders and creditors of the defendant corporation intervened in the cause and raised the objection that a Federal Court of a district where neither the plaintiff nor defendant resided, had no jurisdiction to proceed. This court held that the exemption from suit outside the district of defendant's domicile could be, and had been waived, and said at page 135:

> "It is scarcely necessary to say that, as the defendant company had submitted itself to the jurisdiction of the court, such voluntary action could not be overruled at the instance of stockholders and creditors, not parties to the suit as brought, but who were permitted to become such by an intervening petition."

There is a further reason why the interveners had no right to move to dismiss the petitions for modification. Equity Rule 37 provides for intervention in equity suits but only on condition that "the intervention shall be in subordination to and in recognition of the propriety of the main proceeding." An intervener cannot question the power of the court to proceed with the matter which was the occasion of his intervention. The occasion of the intervention in this cause was that the interveners had been

informed that the Government contemplated a modification of the decree (R. 185). Intervention sought and obtained for the purpose of being heard with reference to a proposed modification of a decree cannot be utilized to prevent a hearing on the question of whether the decree should or should not be modified.

C. THE CLAIMS OF INTERVENERS THAT THEY ABANDONED REMEDIES UPON THE ASSUMPTION THAT THE INJUNCTIVE DECREE OF 1920 WOULD CONTINUE IN PERPETUITY.

The interveners contend that they have abandoned remedies upon the assumption that the decree of 1920 would continue in effect forever. The American Association states at page 8 of its brief that

> "Prior to 1917, wholesale grocers experiencing the adverse effect of the power and practices of the Big Five, presented their difficulties to the President."

The statement is made as a part of the so-called chronological history in order to create the impression that the interveners were instrumental in obtaining the decree of 1920. No record reference is given to support the above-quoted statement and none can be given. However, even if the statement were supportd by the record, the interveners would not have a right to insist upon the maintenance of the injunction in perpetuity. In *Ladner v. Siegel*, 298 Pa. 487 *supra*, the complainant obtained the injunction for the express purpose of protecting his own property. Nevertheless, the Supreme Court of Pennsylvania held that the injunctive decree obtained by the complainant to protect adjacent property owned by him, did not create a vested right.

Interveners further contend that the Packers and Stockyards Act of 1921 (42 Stat. 159) was made less comprehensive than it would have been because Congress acted on the assumption that the consent decree would continue in effect forever. The claim is made that the statute is limited

in scope to the meat industry and has no application to packers when handling food items other than meats (Government brief, p. 63; National Association Brief, pp. 17 and 46, American Association brief, p. 41). The assertion that the present statute is subject to this construction is made without the citation of any authority or even the quotation of the statute itself. The record is referred to (R. 414) but all that appears from the record is that the Secretary of Agriculture has never attempted to exercise such jurisdiction and that the Solicitor for the Department has never passed on the question.

We submit that the legislation is all inclusive, and that the regulation and supervision of packers, provided for therein, extends to every line of business engaged in by any coming within the definition of "Packer" contained in the Act. This is hereinafter discussed at page 73.

A further contention regarding an alleged waiver of rights in reliance upon the assumed perpetuity of the consent decree is based upon the proceedings before the Interstate Commerce Commission (*National Whol. Groc. Ass'n. et al. v. Director General, et al.*, and *Southern Wholesale Grocers Ass'n. v. Director General, et al.*, 62 I. C. C. 375) instituted by the interveners against certain common carriers. This proceeding was instituted to prevent carriers from permitting meat packers to ship grocery articles in their peddler cars. The complaints filed related to all meat packers but that fact did not deter counsel for the American Association from stating at page 8 of their brief that the charges related to "The Big Five Packers". The American Association claims (Brief p. 8) that it abandoned the prosecution of this proceeding before the Commission because the appellees herein contended that the consent decree had removed any competitive relation between them and the grocers.

However, the decision of the Interstate Commerce Com-

merce Commission will show, (page 381) that the National Association vigorously prosecuted the case through to a conclusion; that the American Association, after hearings, moved to place its complaint on the suspense docket which motion was denied by the Commission; that while thereafter the American Association did not actively participate in the proceedings, such course was wholly voluntary, and with full knowledge that the case would be carried through to a decision by the Commission, and with equally full knowledge that the case was being carried forward by their co-appellant here, the National Association. Therefore the American Association has no ground for complaint in this respect.

The wholesale grocers regard the decree of February 27, 1920, from the selfish viewpoint of their own business and have in mind the increased competition resulting from appellees engaging in that business. The wholesale grocers associations constitute a part of the public but do not represent the public interest as a whole. They represent themselves and no one else. Upon no possible theory can the wholesale grocers maintain that their private interests and only such interests shall be considered in determining whether the decree of 1920 shall or shall not be modified.

The interveners had an opportunity to call as witnesses members of their organizations to testify as to the manner and extent, if any, to which their business would be injured by modification. The interveners did not elect to avail themselves of that privilege though the court granted them intervention so that they might be heard and for no other purpose. We respectfully submit that the wholesale grocers as limited interveners have no right to assume control of this proceeding contrary to the position taken by the Government.

PART II: THE PROOF OF CHANGED CONDITIONS.

IV. Changed Conditions Have Removed Any Danger of Monopolistic Control by the Defendants.

Government counsel state at page 29 of their brief that we can not urge that the relief granted in 1920 was inappropriate or unnecessary. We do not make such contention but we do urge that under present conditions the further continuance of certain of the provisions of the decree is neither appropriate nor necessary.

In order to show that there have occurred changes in the conditions which in 1920 were regarded as creating danger of monopolistic control, we must first ascertain what those conditions were. There are two sources from which this information can properly be obtained, namely, the petition of 1920 and evidence in the record regarding conditions in the meat packing and food industry in 1920. The allegations of the petition of 1920 were denied by all defendants and the decree was entered with the distinct understanding that it should not constitute an adjudication of any violation of law, but nevertheless the Government's viewpoint in 1920 can be ascertained from the petition. The petition definitely and comprehensively tells us why the Government was apprehensive of monopoly in 1920. The information thus obtained can be supplemented by the facts proved as to conditions which existed in the meat packing and food industry in 1920. By comparing the information thus obtained with present-day conditions in the meat packing and food industry, we believe we can demonstrate to a certainty that radical changes have occurred during the last ten years which remove all basis for fear of future monopoly by the defendants.

A. FINANCIAL LOSSES OF THE DEFENDANT PACKERS IN 1920, 1921 AND 1922.

In the year 1921, Swift & Company sustained operating losses of $7,812,000 (R. 888a). Armour and Company

sustained operating losses of $31,710,000 in 1921 and $7,679,000 in 1922 (R. 937). Morris & Company lost $2,955,000 in 1920, $11,448,000 in 1921 and $2,546,000 in 1922 (R. 937). Wilson & Company lost $2,941,000 in 1920, $8,462,000 in 1921, and $2,243,000 in 1922, and these losses of Wilson & Company were computed before providing for depreciation of properties (R. 888a). Cudahy Packing Company lost $1,570,000 in 1921 (R. 888a). The total operating losses sustained by the five defendant packers in 1921 were $61,002,000 (R. 888a).

The object of a monopoly is pecuniary. The enormous losses sustained by the defendant packers subsequent to the entry of the decree clearly proved an entire lack of ability to control prices of either livestock or meats.

B. THE RESULT OF THE LOSSES OF 1920, 1921 AND 1922—MORRIS & COMPANY, SOLD; ARMOUR AND COMPANY, REFINANCED; AND WILSON & COMPANY, BANKRUPT.

The losses of Morris & Company in 1920, 1921 and 1922 aggregated $16,949,000, which was about one-third of its entire capital and surplus (R. 937). On March 24, 1923, it sold its physical properties and business to Armour and Company and discontinued business (R. 964). Armour and Company purchased Morris & Company because the Armour plant capacity was greatly developed during the war period and as a result of shrinkage of business after the war, its plants were being operated at about 50 per cent capacity. It was totally impossible to obtain the required amount of volume by solicitation in the competitive field and the only solution of Armour and Company's difficulty was to buy the business of a competitor. The object of the purchase was to reduce the cost of doing business (R. 613) and the opinion of the Secretary of Agriculture, hereinafter discussed at page 79, upholding the validity of the purchase, states that the evidence considered by him was persuasive to the effect that the purchase was made for the purpose of effecting economies in the

Armour and Company business by increasing sales and reducing overhead. (R. 966)

The losses of Armour and Company in 1921 and 1922 aggregating $39,339,000 (R. 937) necessitated a refinancing of the company. A subsidiary, Armour and Company of Delaware, was organized, and issued and sold to the public $50,000,000 of first mortgage bonds and $60,000,000 of preferred stock, all of which was guaranteed by the parent company (Petitioner's Exhibit 126*). A finance committee consisting principally of bankers, appears on the Armour and Company annual report for December 31, 1922 (Petitioners' Exhibit 126) and instead of a corporation controlled in 1920 by the members of the Armour family (R. 544), we find in 1929 a corporation not so controlled, but having 26,000 common stockholders and 54,000 preferred stockholders (R. 543).

As a result of this refinancing, the preferred stock dividend requirements of Armour and Company at the present time are $9,400,000 a year (R. 631) and in 1929 its net profit in a year of 53 weeks was $9,811,000 (R. 937). Armour and Company paid its preferred stock dividend from surplus in 1921, 1922 and 1927 (Petitioners' Exhibit 126), and failed to pay any dividends whatever on common stock in 1922, 1923, 1924, 1927, 1928 and 1929 (R. 940a).

In 1924 Wilson & Company found itself unable to renew its maturing bank loans and on August 26, 1924, a bill for receivership was filed against it and Wilson & Company filed an answer admitting the allegations of the bill as to its insolvency. Receivers were appointed and a few days later an involuntary petition in bankruptcy was filed against Wilson & Company and it was adjudicated a bankrupt. A reorganization followed and Wilson & Co., (Inc.), a new corporation, acquired at a judicial sale, the business and assets of Wilson & Company (R. 558-559).

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*This is one of the exhibits omitted from the printed record but filed with the Clerk of the Court with a stipulation that reference may be made to such exhibits in brief or argument (R. 1172).

We do not claim that the losses suffered by the defendant packers in 1920, 1921 and 1922, the sale of Morris & Company, and the bankruptcy of Wilson & Company were caused by the consent decree. We only claim that the losses were in fact sustained; that they were sustained subsequent to the entry of the decree, and that they substantially weakened the financial position of the defendant packers. Assuming threatened monopoly, justifying injunction, in 1920, clearly it was no longer threatened by those unable to operate profitably, to stay in business, or to avoid bankruptcy.

C. GROWTH OF BUSINESS COMPETITORS SINCE 1920 AND THE PRESENT POSITION OF THE DEFENDANT PACKERS IN THE INDUSTRY,—SWIFT 15.2%; ARMOUR 14.1%; CUDAHY 4.7%; AND WILSON 4.3%.

The United States Bureau of Census gathers statistics every two years with reference to manufacturing establishments whose production amounts to $5,000 a year or more. (R. 389)

The Census figures show not only an increase in the number of slaughtering and meat packing establishments in 1927* as compared with 1921, but also show that the increase occurred with respect to the larger establishments. The following table shows the 1921 and 1927 establishments classified according to value of production per year:

Production	1921	1927
$5,000 to $20,000	142	64
$20,000 to $100,000	304	267
$100,000 to $500,000	360	429
$500,000 to $1,000,000	112	163
$1,000,000 and over.	266	327
Total	1184	1250 (R. 391)

*The last year for which figures were available at the time of trial.

The Packers and Stockyards Administration of the Department of Agriculture receives annual reports from concerns engaged in the packing industry in interstate commerce. The figures of this Administration deal with concerns rather than establishments as is the case in the Census figures. (R. 411) The Packers and Stockyards Act was enacted August 15, 1921, (42 Stat. 159). In 1925, 514 separate meat packing concerns reported to the Administration and by 1929 the number had increased to 998. (R. 733)

In making a comparison of the defendant packers' volume of business with that of their competitors, we shall treat the four defendants *separately* and not as a group. There is no justification whatever for doing otherwise. The Government introduced exhibits (R. 1036a to 1038a) which use the term "Big Four" and treat the business of the four defendants as that of a single concern, and thus assume the absence of competition among them notwithstanding the fact that they are independently owned and controlled (R. 646, 613, 710, 681) and all parties stipulated and agreed that they are active competitors. (R. 558) The trial court so found (R. 1110), and error has not been assigned on this finding (R. 1118-25).

The appellants nevertheless contend that the position of the appellees in the packing industry should be measured upon the basis of their combined business, and that this combined business should be compared with total business of meat packers who slaughter livestock and are engaged in interstate commerce. On this unsound basis, it is claimed that the appellees, combined, control over 54 per cent, and that the four defendant packers control over 70 per cent, of the output of all packers engaged in interstate commerce. (Government's Br., p. 35) The figures used relate to the year 1929 and ignore the business of 245 interstate meat packing concerns subject to the Packers and Stockyards Act simply because they do not engage in slaughtering. (R. 1036h) The figures also ignore the business of 372

additional meat packing concerns who slaughter livestock bought in interstate commerce and are subject to the Packers and Stockyards Act but who do not ship meat products in interstate commerce (R. 1036h). These figures also ignore 166 additional meat packing concerns whose reports were not received by the Administration in time to be included in the 1929 figures (R. 1036h).

The omission of the business of the non-slaughtering packers is not justified. The Beech Nut Packing Company does not engage in slaughtering but its sales for 1929 amounted to $25,000,000 (R. 502-3). Frederick S. Snyder testified that his company does no slaughtering but buys dressed carcasses from about one hundred different midwestern packers. The company performs all of the functions of a packing house apart from slaughtering and its 1930 sales amounted to approximately $10,000,000 (R. 458). The competition of such concerns is not reflected by slaughter figures. The volume and profitable nature of the business of the non-slaughtering packers is proved by Government Exhibit 7 (R. 1036a), which shows that 245 non-slaughtering packers reporting to the Packers and Stockyards Administration in 1929 made sales of $447,229,982 upon which they earned a net profit of $25,835,501 as compared with the best showing of any of the defendants—a net profit of $13,076,000.15 earned by Swift & Company on sales of $1,035,263,000 (R. 953).

The percentage figures adopted by the Government completely ignore the competition of the intra-state packer. Three of the meat packer witnesses who testified in this cause operate purely intra-state packing plants and each of them testified that his company competes with each of the appellees (Henry Fischer, Louisville, R. 432-3; Abraham R. Goldberg, Birmingham, R. 430; and Sederin L. Frey, New Orleans, R. 439). Oscar G. Mayer, President of Oscar Mayer and Co., of Chicago testified that the most severe competition the interstate packer encounters is that of the non-inspected intrastate plant (R. 421). Thomas

W. Talliaferro, President of Hammond Standish & Company of Detroit, testified:

> "At the present time there are 27 uninspected killers in Detroit that slaughter cattle, calves, lambs and hogs. In 1920 there were only four. One of these uninspected slaughtering concerns at the present time kills more lambs than all the Federally inspected plants at Detroit put together." (R. 444)

The testimony in the record is conclusive that keen competition exists between interstate and intrastate meat packers and between slaughtering and non-slaughtering packers.

For many years the United States Department of Agriculture has published estimated figures showing the total slaughter of livestock in the United States. Petitioners' Exhibit 10 (R. 816a) was prepared by an economist of the Department of Agriculture and shows the slaughter of the defendant meat packers and their subsidiaries as compared with total United States slaughter as to each class of livestock. It also shows the estimated total number of pounds of meat and lard produced from the animals slaughtered. These tonnage figures were arrived at by reducing the animals to a dressed weight basis, and afford a better comparison than the number of head, which disregards the great discrepancies in weight of the different classes of livestock. This exhibit shows the following percentage relations between each of the defendant meat packers' production of meat and lard and the total production of meat and lard in the United States during the years 1920 and 1929:

	1920	1929
Swift	13.2%	15.2%
Armour (Including Morris)	15.8%	14.1%
Wilson	5.2%	4.3%
Cudahy	4.0%	4.7%

(R. 816a)

Two of the alleged monopolists of 1920 have been unable to retain the percentage of business they had in 1920. The 1929 figures certainly are not suggestive of any monopolistic control at the present time. So far as our investigation has disclosed, the Government has never contended in any reported decision that danger of a monopoly existed in any industry where the largest concern in that industry controlled but 15.2 per cent of the total business.

That it is proper to consider the total production of the country instead of only the business of packers whose products are shipped in interstate commerce is shown by the following cases in which total production figures were used:

Standard Oil Co. vs. United States, 283 U. S. 163;
Geddes vs. Anaconda Copper Mining Co., 254 U. S. 590;
United States vs. United States Steel Corporation, 223 Fed. 55, 134; affirmed, 251 U. S. 417.
Bigelow vs. Calumet and Hecla Co. et al., 167 Fed. (6th C. C. A.) 721.

When this basis of comparison is used, it is apparent that the defendants considered either separately, or as a group do not have control of the meat business of the country.

During the ten year period from 1920 to 1929 many of the defendants' competitors have increased their volume of business as is proved by their testimony. The record shows the following comparison of 1920 and 1929 dollar sales of competitors of the defendant-packers:

	1920	1929	Record
Eastside Packing Company	$3,500,000	$22,000,000	425
Adolf Gobel, Inc.	7,052,000	46,032,000	866a
Bath Packing Company	8,000,000	33,932,000	549
Brennan Packing Company	9,631,000	13,598,000	866a
Oscar Mayer & Co.	11,187,000	23,492,000	866a
John J. Felin and Company	11,446,000	13,887,000	866a
Cleveland Provision Co.	12,000,000	13,500,000	439
Beech-Nut Packing Company	12,050,000	23,732,000	866a
Geo. A. Hormel and Company	25,324,000	38,220,000	866a
John Morrell and Company	51,944,907	101,976,252	546
Jacob Dold Packing Company	56,512,175	55,558,597	550

The Alabama Packing Company of Birmingham started business subsequent to 1920 with a capital of $23,000 and by 1929 had an invested capital of $400,000 (R. 429). The American Packing and Provision Company of Ogden, Utah was organized in 1924. Its sales increased from $2,800,000 in 1925 to $3,850,000 in 1929 (R. 430). The sales of Hammond Standish Company of Detroit increased from $6,600,000 in 1922 to $12,500,000 in 1929 (R. 443). The sales of Fischer Packing Company of Louisville increased from $1,000,000 in 1923 to $2,250,000 in 1929 (R. 432). The business of L. E. Frey and Sons, New Orleans has been tripled since 1923 (R. 438). Neuhoff Packing Company of Nashville has doubled its business since 1920 (R. 452), and the same is true of the East Tennessee Packing Company at Knoxville (R. 433). Blayney-Murphy Company of Denver has substantially increased its business since 1924. (R. 454)

With one exception all defendants' competitors increased the volume of their business in the decade between 1920 and 1930, the single exception being Jacob Dold Packing Company whose business decreased 1¼ per cent. At the same time each and every defendant meat packer suffered a decrease in business (R. 888a). Counsel for the Government seek to minimize the effect of this growth by stating (brief page 32) that the total sales of 13 of these competitors amounted to only $407,476,000. However, the significance of the figures is found in the fact that the growth of these competitors was very substantial, whereas the defendant meat packers all suffered a decrease in business. (R. 888a) Indeed the ability of a small packer to increase its volume of business is more significant than a similar growth by a larger packer. The Government contends (brief, page 32) that the "defendants have retained their *dominating* size and power." This growth of competitors certainly is not an evidence of *dominance*. The petition of 1920 charged that the defendants had "eliminated competition in meat products" (R. 17), but subsequent events have

proved there is extensive and active competition in the sale of meat products and that small concerns have been able to prosper and increase their volume during a period when the defendant packers have lost business and suffered severe financial losses.

Obviously it is not true that either the power to monopolize or to crush competitors exists in those who have not been able to hold their own strength, and who occupy part of a field wherein flourish increasingly successful and strong competitors—competitors who testified, without exception, that they have no fear of defendants' competition. Herein is found evidence of conditions radically changed when compared with the conditions set forth in the Government's original petition of 1920.

D. THE EARNING POWER OF THE DEFENDANT PACKERS AND THEIR COMPETITORS SINCE 1920.

The record contains evidence of the sales and earnings of 15 of the appellees' largest competitors from 1920 to 1929 (R. 866a and b) and also shows the same information as to the defendant packers (R. 888a). This information shows that in each and every year since 1920 competitors have lost less in bad years and earned more in good years than the defendant packers. The following table groups the defendants' earnings and compares the same with the combined earnings of 15 competitors from 1920 to 1929:

Year	Percentage of Defendants' Earnings on Sales	Percentage of Competitors' Earnings on Sales	Percentage of Defendants' Earnings on Net Worth	Percentage of Competitors' Earnings on Net Worth
1920	.18	.76	.88	2.48
1921	3.05 (Loss)	.17 (Loss)	10.27 (Loss)	5.80 (Loss)
1922	.10	2.72	.35	10.87
1923	1.58	3.40	5.65	12.00
1924	1.77	3.39	6.46	13.28
1925	1.44	2.03	5.82	9.11
1926	1.35	2.65	5.03	12.24
1927	.63	2.07	2.49	9.83
1928	1.24	3.17	5.13	14.10
1929	1.06	2.68	4.55	14.02

(R. 866a and b and 888a)

In the year 1929 Swift & Company earned 1.26 per cent on sales; Armour and Company .98 per cent; Wilson .75 per cent and Cudahy .94 per cent (R. 888a). In the same year Beech-Nut Packing Company earned 11.39 per cent on sales; Morrell & Company 3.62 per cent on sales; Hormel & Company, 5.80 per cent on sales; Rath Packing Company 1.64 per cent on sales; Felin & Company 3.00 per cent; Brennan Packing Company 2.93 per cent; and Miller and Hart 2.54 per cent (R. 866a).

In 1929 Swift & Company earned 5.78 per cent on net worth, Armour and Company 3.54 per cent, Wilson 3.52 per cent and Cudahy Packing Company 6.26 per cent (R. 888a). In the same year Morrell and Company earned 17.98 per cent on net worth; Beech Nut Packing Company 17.50 per cent; Hormel and Company 32.50 per cent; Felin and Company 13.73 per cent; Brennan Packing Company 11.70 per cent; and Miller and Hart 9.06 per cent (R. 866a and b). The percentage earnings of the defendant packers on net worth compared with the percentage earnings on net worth by all meat packing companies reporting to the Packers and Stockyards Administration from 1925 to 1929 were as follows:

Year	Concerns Under P. & S. Administration	Swift	Armour	Wilson	Cudahy
1925	6.87	7.12	5.04	2.75	8.48
1926	5.96	7.13	3.41	5.01	10.70
1927	3.94	5.47	.19	.24	5.91
1928	7.14	6.63	4.09	3.54	6.44
1929	6.45	5.78	3.54	3.52	6.26

(R. 817 and 888a)

We respectfully direct the Court's attention to the trend shown by the above tabulation. In the years 1925, 1926 and 1927 the percentage earnings of Swift & Company and Cudahy Packing Company exceeded the percentage earnings of the industry as a whole; whereas the percentage earnings of Armour & Company and Wilson and Company were less than the earnings of the industry as a whole.

During the last two years—1928 and 1929—each of the four defendant packers earned less than the industry as a whole.

The Government has attempted to show that the contrary is true and in its exhibits 21-23 has adopted a peculiar selective process of making comparisons in order to obtain the desired result. These exhibits (R. 1038a) compare the net sales and net earnings of the defendant packers with the net sales and net earnings of Federally-inspected slaughtering packers reporting to the Packers and Stockyards Administration. There are excluded from the exhibits not only the sales and profits of non-slaughtering packers who report to the Administration, but also the sales and profits of slaughtering packers who are under the jurisdiction of the Administration, because they buy livestock on public markets, but nevertheless are not classed as Federally-inspected packers because they do not ship meats in interstate commerce.

The extent of these omissions is disclosed by Government Exhibit 7 (R. 1036a). It appears from that exhibit that in 1929 there were 245 non-slaughtering packers under the jurisdiction of the Packers and Stockyards Administration who derived a net profit of $25,835,501.34 from sales of $447,229,982.22 (R. 1036a). Government Exhibit 7 further shows that in 1929 there were 372 non-inspected slaughtering concerns under the jurisdiction of the Packers and Stockyards Act and that they derived a net profit of $4,709,686.19 from sales of $289,002,009.16 (R. 1036a). Supplying these omissions in Government Exhibit 21, the following result is obtained:

	Sales	Profits	Percentage of Profits to Sales
Defendant Meat Packers	$2,558,742,455.18	$27,945,776.75	1.09
Other packers under P. & S. Administration	1,736,606,228.04	37,795,855.25	2.17

The method of comparison adopted by the Government produced a curious result for the year 1927. Government Exhibit 22 (R. 1038a) relating to that year shows that the defendant packers' combined sales were 69.76 per cent of total sales, and that their profits were 103.27 per cent of total profits. This is occasioned by the fact that during that year, 187 Federally inspected slaughterers other than the defendant packers sustained a net loss of $515,716.20 upon sales of $961,192,225.88 (R. 1038a). The Government witness who prepared this exhibit explained that this loss did not mean that all of the 187 Federally inspected slaughtering concerns lost money during the year 1927. He said that 70 per cent of the total losses were sustained by 6 concerns and that 47 per cent of the total losses were sustained by 2 concerns and that many of these concerns earned substantial profits in 1927 (R. 736). Correcting the Government exhibit relating to the year 1927 by supplying the sales and earnings of non-slaughtering packers and slaughtering packers not operating under Federal inspection, the conclusion that the defendant packers earned 103.27 per cent of profits on 69.76 per cent of the total sales is changed as follows:

	Sales	Profits	Percentage of Profits to Sales
Defendant Packers	$2,351,936,899.96	$16,299,602.81	.69
Other packers under P. & S. Administration	1,516,059,355.50	21,996,705.62	1.45

The trial court very aptly summarizes the comparisons of earnings of defendant packers and their competitors as follows:

> "So that under any method of comparison it does appear that the net profits of the defendants are small as compared with that of their competitors. One usual concomitant of a monoply, vast profits in proportion to its business, does not exist on the part of any of

the defendants. And as further evidence of this it appears that the defendant, Wilson & Company, became a bankrupt in 1924, and had to be reorganized." (R. 1048-9.)

There appears at page 34 of the Government brief a unique idea as to the manner in which prices for commodities are established in a highly competitive industry. Counsel state:

> "The higher operating costs of local packers is graphically reflected in the fact that they sell their meats at from one cent to three cents a pound above the prices charged by defendants (R. 430, 433, 441, 442, 448, 453, 660)."

The first record reference given by the Government in support of this statement is to the testimony of Abraham R. Goldberg, President of the Alabama Packing Company, an uninspected plant located at Birmingham (R. 429). This witness said:

> "We buy our livestock and sell our products in the face of keen competition with Armour, Swift, Cudahy, Wilson, and other packing concerns, and to a certain extent have an advantage over them, because we kill locally and sell our stuff fresh. This brings from a half cent to a cent a pound more than meat of the larger packers shipped in from outside." (R. 430)

The witness did not say anything about his operating costs. Each and every witness cited by the Government in support of its statement testified that he was able to get more money for his products because killed locally and sold fresh instead of being killed at a distance and shipped in. No packer witness testified that he could get more for his products than the defendants because his operating costs were higher. As a matter of fact the operating costs of a small packer are not higher than those of a large packer. The fact that in 1929 Morrell and Co.

earned 3.62 per cent on sales (R. 867), Hormel and Co. 5.80 per cent on sales (R. 871), Miller and Hart 2.54 per cent on sales (R. 876), Felin and Co. 3.0 per cent on sales (R. 874), Brennan Packing Company 2.93 per cent on sales (R. 875), as compared with earnings of 1.26 per cent on sales by Swift & Company and .98 per cent by Armour and Company (R. 888a), is inconsistent with the claim that small packers have higher operating costs than large packers.

E. THE INCREASE OF COÖPERATIVE SELLING AND DIRECT MARKETING OF LIVE STOCK SINCE 1920.

The basic raw material of the packing industry is livestock, produced on 6,297,877 farms in the United States (Petitioners' Exhibit 67, not printed, R. 1173). The farmers of the United States dispose of their livestock by sales on the public markets through the agency of commission men or the recently-developed cooperative marketing and shipping associations. They also sell livestock directly to packers, either by means of shipments to private yards located adjacent to packing plants or by selling to packer-buyers on farms or at concentration points in the country. They also dispose of livestock by slaughtering for home consumption or to sell on nearby markets.

The purchase of livestock on public markets is accomplished by buyers in the employ of packers, order buyers who act as agents for packers not located at the particular market where purchases are made, traders and speculators who buy with a view of reselling at a profit, and producers who purchase stockers and feeders for further feeding and finishing (R. 398).

The public livestock markets of the United States are controlled and regulated by the Secretary of Agriculture under the Packers and Stockyards Act of 1921. The petition of 1920 alleged there were at that time 50

public markets in the United States (R. 15). There are at the present time 74 such public markets (R. 818-20), located in 31 different states and the District of Columbia (R. 818-20). 89,832,592 head of livestock were received at these public markets in 1929.

The various types of buying and selling agencies operating on public markets are defined and classified by the Packers and Stockyards Act as market dealers and market agencies, and are required to register with the Administration and to furnish bonds to secure the performance of their obligations. At the present time there are registered with the Administration 4,461 market dealers and agencies operating on the public markets. (R. 408)

Since 1920 there has occurred an unusual growth in the sales of livestock by cooperative associations. The records of the Federal Farm Board show that in 1920 there were three cooperative sales agencies operating at three public markets—Denver, Omaha and St. Joseph—and that their combined sales were 84,863 cattle, 536,380 hogs and 29,676 sheep (R. 403). The same records show 28 such cooperative associations in 1929 operating at 22 public markets with sales of 1,904,066 cattle, 8,054,186 hogs and 2,093,137 sheep (R. 403). The dollar volume of sales in livestock by these cooperative agencies increased from $37,419,935 in 1920 to $302,894,934 in 1929. (R. 403.)

Direct sales of livestock, like cooperative sales, have increased enormously since 1920. Many packers today own and operate private yards adjacent to their packing plants (R. 413). Direct buying of livestock is also carried on at concentration points in the country and on farms. John Morrell and Company, operating packing plants at Ottumwa, Iowa, and Sioux Falls, S. Dak., killed more than 2,000,000 head of livestock in 1929 and purchased practically all of it directly from producers at its private yards or in the country. (R. 546-47) The Rath Packing Company of Waterloo, Iowa, killed 980,000

hogs and 40,000 cattle in 1929 and purchased substantially all its livestock at its plant or in the country (R. 549). An economist in the employ of the Department of Agriculture estimated that 40 per cent of the hogs sold in the United States during 1929 were sold direct instead of on the public markets (R. 401).

Manifestly, between 1920 and 1930 public stockyard markets ceased to be instrumentalities through which monopoly could be achieved.

F. THE GROWTH AND DEVELOPMENT OF MARKET NEWS SERVICE SINCE 1920.

The petition upon which the consent decree is based enumerates market papers and journals as one of the facilities controlled by the defendant packers in 1920, which constituted a means by which monopoly could be achieved. The petition further alleges:

> "Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.
>
> "It is, therefore, evident that control of the stockyards and of other facilities appertaining to the stockyards carries with it: * * *
>
> "(e) Peculiar and exclusive access to information concerning the receipts and sale of livestock, its disposition, and the dissemination of information to the producer." (R. 12)

The appellees' witness, C. A. Burmeister of the Bureau of Agricultural Economics gave an exhaustive description of the existing news reporting service relating to livestock markets and meat trade conditions and of the growth and development of this service since 1920. The Bureau of Agricultural Economics is a branch of the Department of Agriculture and its function is to collect and disseminate information regarding the production and marketing of livestock and other agricultural prod-

ucts (R. 392). Its main office is in Washington. On January 1, 1930, it had 2,403 employees, of which 1029 were located in Washington and 1374 scattered throughout the United States. The Bureau operates 10,579 miles of leased wires and employs 70 telegraph operators at 48 separate offices (R. 392).

The Bureau, through its numerous employees, collects information during all hours of the day at the various public livestock markets and circulates market news as rapidly as possible by all modern means. Information is obtained from railroads and other sources regarding probable receipts of livestock at particular markets and estimates are sent by telegraph to the 48 offices of the Bureau (R. 394). Information regarding trends and prices is also released by wire as soon as obtainable (R. 394-5). Each morning a report is sent out of estimated receipts for the following day so as to inform shippers of conditions in time to make changes in their plans and either defer shipping or ship to a different market if they so desire (R. 395). After the close of each day's market a detailed mimeographed report of conditions and prices is prepared by the Government and sent free of cost to anyone on the mailing list. During the fiscal year 1930 five million such reports were distributed. (R. 395)

The market news service of the Department of Agriculture has recently been extended to direct buying. On September 2, 1930, an office was opened at Des Moines, Iowa and reporters in the employ of the Government now cover 29 concentration points located in the state of Iowa and disseminate information thus obtained (R. 399).

The telephone is also used to convey information regarding livestock and at the Chicago market the Bureau of Agricultural Economics operates 10 trunk lines for the purpose of answering inquiries regarding receipts and prices. (R. 400.)

The first use of the radio as a market news facility occurred in December, 1920, and by 1921 experimental

work was being conducted by three stations. The number of stations increased to 65 in 1922; 85 in 1923; 92 in 1924; and 110 in 1929 (R. 395-6).) Ninety of these 110 stations now broadcast information regarding livestock receipts and prices (R. 396).

The Department of Agriculture also maintains an extensive market reporting service with respect to meats, the wholesale price of meats, the supplies of meats in storage and meat trade conditions generally (R. 396). It also circulates information of an analytical and interpretive nature. Trained economists employed by the Government analyze and interpret facts and predict probable developments and trends as to livestock and other agricultural commodities (R. 396).

Market news regarding livestock is disseminated not alone by the Government, but also by various press associations, such as the Associated Press, International News Service and the United News Service (R. 399). The Associated Press operates 225,000 miles of leased wires and issues telegraphic reports regarding 37 public livestock markets (R. 429).

In 1920, the Government believed, as shown by the allegations of the petition, that the ownership of market papers and journals gave to the defendant packers "peculiar and exclusive access to information concerning the receipts and sales of livestock." (R. 12.) At the trial of the cause, the appellees, the United States Government, and the interveners entered into the following stipulation:

> "As to public markets, it is further stipulated that producers of livestock and sellers of meat and meat products and other food products in the United States are now enabled to receive prompt, full, accurate, and unbiased reports of the demand for livestock, the prices prevailing, the character and kind of stock required, the receipts at and condition of the markets in which stock is sold and the markets in which meat and other food products are sold, together

with information respecting trade and market conditions. There does not exist control by the defendants, or any of them, of the media or channels through which this information is furnished, or any peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, the dissemination of information to the producer, or the sales and market conditions relating to meats and other finished products of live stock or other foods." (R. 564)

Obviously, there can be no dispute that during the decade following the entry of the 1920 decree this element in the then feared monopoly disappeared.

G. THE FUNCTIONS OF ORDER BUYERS AND THE EFFECT OF PRESENT DAY MARKET NEWS SERVICE THEREON.

In order to appreciate the difficulties which would be encountered in an attempt to monopolize the buying of livestock under present conditions, it is essential to consider the present-day activities of order buyers. Order buyers purchase live stock as agents for packers. (R. 398) In 1929 there were 264 order buyers operating on the public livestock markets (R. 408). A single order buying firm in the United States, Kennett Murray Livestock Buying Organization, maintains buying establishments at 15 public markets and makes purchases on behalf of from 600 to 700 different packing concerns. In a normal year, its purchases of livestock approximate 5,000,000 hogs, 250,000 cattle and 250,000 sheep (R. 534).

The order buyers nearly always make purchases for packers whose plants are located at a distance from the market where purchases are made. At Chicago, there are 16 order buying firms who employ 40 buyers and make purchases regularly on the Chicago market for more than 300 outside packers (R. 534). At East St. Louis, there are 14 order buying firms with 41 buyers who make purchases for approximately 100 packers (R. 534) and 70 per cent of the hogs sold on this market are purchased by

order buyers and shipped to packers located at distant points (R. 536).

In 1929, the total receipts of hogs at all public markets was 43,564,383 and of this total 15,492,053 hogs were not slaughtered where purchased, but were shipped for slaughter at distant points (R. 824b).

The extensive purchases of livestock through order buyers and the producers' exclusive control of shipments, combine to prevent the manipulation or control of prices at the public markets of the United States. The livestock market is a national market and not a local market as a result of the present highly developed news dissemination service of the Department of Agriculture. Because of the prompt receipt of accurate and unbiased market news, the producers are enabled to exercise intelligent judgment as to when and where they should ship, and packers scattered throughout the United States and operating both at near and distant markets through order buyers, are enabled to pick the time and the market at which they can buy to the best advantage. News dissemination diverts shipments and increases purchases on temporarily low markets and increases shipments and diverts purchases at temporarily high markets. As a result, the low markets promptly advance and high markets promptly decline.

C. B. Heinemann, of the Kennett Murray Livestock Buying Organization, testified that if his firm has orders to fill at the Chicago market on a particular day and finds that the Omaha market has a lower price prevailing for the same class and grade of livestock, he advises his customer to shift his order to the Omaha market (R. 536-7). This switching of orders to temporarily low markets immediately stimulates buying and brings the market back to normal. (R. 536-7.) John A. Hawkinson, former President of the Allied Packers, Inc. (R. 659), testified that if one livestock market goes to a lower level than other live-

stock markets, the low market immediately becomes a target for increased buying and quickly adjusts itself. (R. 661) Oscar G. Mayer testified that the various markets of the United States compete with each other and that if any one of them falls below the general level, orders immediately come in from other packers, and it is brought back in line. (R. 422.)

These factors operating on all markets are an absolute protection against the monopolization of any particular market. Purchases of livestock at low prices at any particular market immediately result in a curtailment of shipments and also an influx of orders from packers scattered throughout the country. Even 100 per cent buying on a market does not carry with it ability to control prices under present conditions. This is illustrated by private stockyards. If a packer operating a private yard should attempt to pay producers less than prevailing market prices, shipments to the private yard would immediately cease. The public market is not only subject to this undoubted power of producers to divert shipments but also to the increased activity of order buyers on temporarily low markets.

Under present conditions the smallest packer is on an equality with the largest packer as to the purchase of livestock. The small packer acquires news of receipts and prevailing prices just as promptly as the large packers. The small packer can place an order at any market through the agency of an order buyer and can buy at the same price as the large packer. There is no such thing as a quantity discount in the livestock market because there are no quantity sellers. Livestock is owned by the 6,000,000 farmers of the United States and must of necessity be purchased in small quantities. The large packer does not make larger purchases than the small packer, but simply makes a larger number of small purchases from different owners. (R. 423)

The differences in conditions which confronted an at-

tempted monopolist of livestock buying in 1920 as compared with the present day facts is as striking an example of changed conditions as can be imagined. In 1920, a packer seeking a monopoly in the buying of livestock would have had to contend with 50 public markets (R. 15). Today, there are 74 such markets (R. 818-820). In 1920 the 50 markets were not regulated by any Government agency. Now, the 74 markets, and the 4,461 registered market agencies and dealers operating thereon, are thoroughly regulated and supervised by the Secretary of Agriculture. In 1920, direct selling and buying was insignificant, but today 40 per cent of the hogs killed are sold directly and never reach a public market (R. 401). In 1920, there was little or no cooperative selling, but today more than $300,000,000 of livestock is sold cooperatively in a single year (R. 403). In 1920, according to the allegations of the petition, the defendant packers had exclusive access to information as to livestock receipts and prices and could control the flow of livestock to markets, but today there are more than 2,400 Government employees engaged in collecting market information and circulating it by 10,000 miles of wires, 90 radio stations and 5,000,000 mimeographed bulletins a year (R. 392).

All of these factors combine to make impossible the control of livestock prices or monopolization of livestock markets. This was conclusively established by the testimony of livestock producers, commission men, order buyers, and competing packers at the hearing below: Moody (R. 405); Mayer (R. 420); Hunter (R. 426-7); Miller (R. 431); Fischer (R. 433); Madden (R. 434); Heil (R. 437); Frey (R. 439); Schanz (R. 440); Neuhoff (R. 452); Murphy (R. 455); Trier (R. 456); Magee (R. 478); Tomhave (R. 480); Walker (R. 481); Tod (R. 483); Gunn (R. 484); Hooper (R. 485); Mercer (R. 487); Wing (R. 488); Heinemann (R. 536).

Inevitable therefore was the fully supported finding of the District Court, as follows:

"4. That defendants in purchasing live stock from producers and their representatives are in keen and active competition with each other, and with many other buyers of live stock, and do not subject the sellers to any unfair trade practices and do treat them fairly; and that these fair and competitive conditions apply to purchases of live stock made by defendants (a) at public stockyard markets, (b) at their own private stockyards, and (c) when buying directly from the producer, or his agent, at or near places of production. (R. 1111)

H. THE REPORTS OF THE COURT'S TRUSTEES REGARDING STOCKYARDS.

It is true, as stated by appellants, that the lower court refused to modify that part of the consent decree which relates to the ownership of stockyard companies. Nevertheless the proof of changed conditions with reference to stockyards has a material bearing upon the modification of the decree which was granted. The lower court said in his opinion:

"I do not think that in order to show a right to modify the injunction in any one respect, the changes in conditions which would justify such a modification should be limited to those bearing particularly upon that one question, * * *.

The gravest source of danger alleged in the bill was that with reference to the control by the defendants of the stockyards, terminal railroads and market newspapers, and the most reprehensible practices charged against the packers were those connected with their operation of those facilities * * *". (R. 1057)

The allegations of the original petition disclose that in the view of the Government in 1920, the public stockyards owned by the defendant packers were a dangerous instrumentality of monopoly. (R. 9-12) The petition alleged that the stockyard "was and is in theory a public market place;" that yardage charges were ordinarily based upon "an arbitrary price per head" (R. 9); that

stockyard companies generally owned or controlled all available land within the public yards and could thus prevent the erection of new packing plants and hamper the growth of those in existence; that the ownership of stockyards carried with it a power to grant monopolies to banks, cattle loan institutions and rendering plants and also was a potential means of favoritism in connection with the allotment of office space and pens to commission men (R. 10-12).

Paragraph second of the decree of 1920 enjoined the defendants from owning any capital stock or other interest in any public stockyard company, or stockyard terminal railroad, o. stockyard newspaper or journal (R. 154). Paragraph tenth of the decree directed the defendants to submit to the court a plan for the divestiture of their existing ownership of interests in public stockyards, terminal railroads and market newspapers (R. 162-3). Pursuant to this requirement of the decree a plan for the disposition of such interests was approved by the court and Mr. George Sutherland and Mr. Henry W. Anderson were appointed Trustees. The Swift and Armour corporate and individual defendants deposited with the Illinois Trust & Savings Bank of Chicago, as depositary, their certificates of stock in stockyards companies and executed and delivered to said Trustees irrevocable powers of attorney authorizing the Trustees to vote said stock at stockholders' meetings (R. 977-8).

The Trustees, and a Special Assistant to the Attorney General, thereafter conducted hearings at all of the public stockyards in which either the Swift or Armour defendants had a substantial interest. Such hearings were public and a voluminous record of the testimony and a report thereon were filed by the Trustees with the court on April 8, 1922 (R. 977-999). A further report was made by Mr. Anderson as sole Trustee on March 21, 1923 (R. 999-1011).

The Trustees' Report of April 8, 1922, discloses numerous efforts made to sell the Swift and Armour interests in

stockyard companies. These efforts culminated with the insertion of advertisements in 28 different newspapers scattered throughout the United States offering the Swift and Armour stock in stockyard companies at public sale. No bids were received for any substantial part of the stock as a result of these advertisements (R. 996).

On the subject covered by the charges of the petition of 1920 to the effect that stockyard companies were utilized by the defendants to prevent the establishment of new packing plants, the Trustees, speaking of conditions found by them in 1922, reported to the Court as follows:

> "Your Trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyard companies against such independent plants, either in leasing land upon which to locate said plants or in any other manner. The testimony both of the officers of the stockyard companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards, with a view to the development of their markets and resulting increase in their business." (R. 990.)

There is no scarcity of packing plants adjacent to public markets at the present time. There are 57 plants at Chicago, 36 at Cincinnati, 29 at Buffalo, 21 at San Francisco, 40 at New York, 34 at Philadelphia, 20 at Pittsburgh and 34 at Baltimore, etc. (R. 391). Furthermore, the growth of direct buying and selling since 1920 has minimized, if not removed the advantage of establishing packing plants adjacent to public markets. The tremendous growth of the business of such concerns as Morrell & Company at Ottumwa, Iowa (R. 546), George A. Hormel & Company at Austin, Minn., (R. 871) and Rath Packing Company at Waterloo, Iowa (R. 549), all far removed from any public stockyards, proves that a site adjacent to a public yard is no longer essential.

The petition of 1920 alleged that cattle raisers were in many instances dependent upon banks or loan companies to finance them in the rearing of livestock and that it was a great advantage to cattle loan companies to be located in or near the stockyards. The petition further charged:

> "It, therefore, lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards." (R. 10)

The Trustees' Report of April 8, 1922, contains the following statements regarding stockyard banks:

> "There is maintained and operated at the administration or exchange building at each of the stock yards visited, and as your trustees are advised at the other company yards also, a stock yard bank. This institution leases its quarters in the administration building from the stockyards company, but in no instance did the testimony show that the stockyards company was in any wise interested in the stock of the bank, or had any control over the operations thereof. * * * Your trustees could find nothing in the relations between these banks and the stockyard companies in violation of the anti-trust laws of the United States or of the decree in this cause." (R. 988-9)

The petition of 1920 contains the following allegations regarding rendering plants:

> "While in transit or after reaching the yards, live stock often die either from disease or accident. The stockyard companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards." (R. 10-11)

On the subject of rendering plants the Trustees in 1922 made the following report:

"At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other commercial products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this court. The evidence showed that in no instance was the rendering plant controlled by the stockyard company, and in fact your trustee found no instance in which the stockyard company had any interest in the company operating the rendering plant. Your trustee found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give to the stockyard company some responsible agency to which it could look for the prompt removal of dead animals, which was essential to the sanitary condition of the yard. The reason given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stockyard companies and the rendering plants which they deemed a violation of the anti-trust laws of the United States, or of the decree of this court." (R. 988).

The petition of 1920 makes the following charges regarding the allotment of pens and office space to commission men:

"The commission men and traders at the stock yards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are allotted pens, and inasmuch as it of great advantage to the commission men to be able to dispose

of his customers' live stock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.". (R. 11)

The Trustees reported, as to 1922 conditions, on this subject as follows:

"Your trustees made special inquiry into the methods followed in assigning pens or space to the various commission men, traders and speculators who operated in the yards. This inquiry was especially directed to the question as to whether there was any discrimination in this regard. It appears that no charge is made by the stockyard company for the use of the pens by the commission men, traders and speculators. The pens are assigned to the various commission men in one section of the yard, to traders in another section and to speculators in another section, the object being to arrange these assignments in such way as best to promote the convenience and expeditious handling of the cattle in the yards, and to avoid movements in different directions. The amount of space assigned to each of the commission men, traders and speculators is based generally upon the amount of business done the preceding year. These assignments of space are readjusted from time to time to meet the changes in the development of the business of the various commission men, traders and speculators. If a new buyer enters the yard he is given the best available space, the amount thereof being based upon his probable business, and thereafter adjusted in accordance with experience. While each of the commission men, traders, and speculators naturally desire to secure the best location possible in the yard, we found no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness * * *." (R. 985-6)

Regarding terminal railroads the petition of 1920 charged the following:

"The centralization of the market at one site and the resultant growth of the packing houses in or about the market, of necessity, required terminal railways to facilitate the switching of cars from the railroads to the stock yards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stock yard railways are usually owned by the stock yard companies or by those in control of the stock yard companies. Control of these railways carries with it power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines." (R. 11)

Regarding terminal railroads in 1922 the Trustees reported as follows:

"These terminal railroads are under the supervision of the Interstate Commerce Commission and of the state public utility commissions within the limits of their jurisdiction. Their rates are on file with the Interstate Commerce Commission." (R. 985)

The Trustees of the Court reported at length regarding the efficiency with which packer-owned yards were operated and managed and said that such management was entirely lawful and that the witnesses called were unable to suggest any improvement in management (R. 992-3).

And in conclusion the Trustees reported:

"Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion

that said stockyards and stockyard terminal railroads are not now being used in violation of the Anti-Trust Laws of the United States, or of the decree of this court entered in this cause." (R. 993.)

In the supplemental report of March 21, 1923, Mr. Anderson further advised the Court:

"The evidence was universal to the effect that the stock yards company had nothing to do with the sale or handling of live stock on the yards, except to provide the facilities and service, and your trustee was unable to develop any evidence of the slightest discrimination on the part of stock yards companies as between packers and other buyers. The testimony was also general that there was full and free competition in the purchase of live stock upon the yards at all points visited." (R. 1010)

The extensive investigation made by the Court's Trustees with reference to stockyards and stockyard facilities was made subsequent to the entry of the decree of 1920. The reports of the Trustees appear in full at pages 977-1011 of the record and they establish definitely that the charges made by the petition with reference to stockyards in 1920 were not true when the subject matter was investigated by the Trustees in 1922 and 1923.

I. THE PACKERS AND STOCKYARDS ACT OF AUGUST 15, 1921 AND THE ADMINISTRATION THEREOF.

(1) THE SCOPE OF THE ACT.

The Packers and Stockyards Act was enacted by Congress August 15, 1921. (42 Stat. 159) It confers on the Secretary of Agriculture complete supervisory and regulatory power over packers and stockyards.

The Government contends:

"Furthermore, the Act does not apply to unrelated lines. The Act confers no jurisdiction, and the Secretary has never attempted to exercise any jurisdiction,

over packer use of refrigerator cars or over business done by packers in unrelated lines." (Government Brief 63.)

The trouble with this inference is that the Act *does* deal with the handling of unrelated food lines by packers as well as all other activities of packers.

Title II of the Act relates to "Packers". In Section 201, the term "packer" is defined as:

> "any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, * * * "

Section 202 declares it to be unlawful for:

> "any packer to (a) engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or * * * (d) sell or * * * buy * * * from or for any other person, any article for the purpose * * * of manipulating or controlling prices in Commerce, or of creating a monopoly in * * * dealing in any article in Commerce * * *."

Section 2 (a) (6) declares that:

> "the term 'commerce' means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; * * *,"

and subdivision (b) relating to the "current of commerce" is expressly declared as

> "not in anywise limiting the foregoing definition * * *."

The comprehensive terms "any unfair practice," and "any article" are used. It is therefore perfectly obvious that the Act prohibits packers from engaging in any and all unfair practices or dealing in any article for the purpose

of controlling prices or creating a monopoly in interstate commerce. Congress clearly intended by this Act to transfer all of the jurisdiction of the Federal Trade Commission relating to packers to the Secretary of Agriculture. It certainly did not intend to place the packers under a divided jurisdiction, and so in Sec. 406 (b) it enacted that:

> "the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this act is made subject to the jurisdiction of the Secretary, * * *."

If Congress had intended otherwise, it would have reserved to the Federal Trade Commission, such jurisdiction as it desired retained by that Commission, just as, in Sec. 406 (a) it reserved certain jurisdiction to the Interstate Commerce Commission.

This construction of the statute is confirmed, its constitutionality upheld and its general purpose described in *Stafford vs. Wallace,* 258 U. S. 495, where at page 513 it is said:

> "The Packers and Stockyards Act of 1921 seeks to regulate the business of the packers done in interstate commerce, and forbids them to engage in unfair, discriminatory, or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon, and to order the packers to cease any forbidden practice."

The Secretary of Agriculture so construed the statute in holding that he had jurisdiction over activities of packers in the ownership and operation of private stockyards which are not subject to the Act. Dr. Frank W. Miller, Assistant Chief, Packers and Stockyards Ad-

ministration, Bureau of Animal Industry, Department of Agriculture, testified:

> "We claim jurisdiction over private yards and concentration points operated by packing concerns * * * only so far as what goes on in those yards comes under Title II of the Act, that is, so far as they are the operations of a packer as such (R. 413) * * *. We have had no cause involving the regulation of the business of dealing in canned fruits or vegetables by packers, and I do not know personally whether we have jurisdiction or not. * * * The Secretary of Agriculture held in Docket No. 1, that he had jurisdiction over the activities of the Fowler Packing Company, a subsidiary of Armour and Company, at the Mistletoe Yard, under Title II of the Act, and the Secretary exercised such jurisdiction." (R. 414)

If any aid to the interpretation of the statute is required it is found in the following statement of Mr. Haugen, who had the bill in charge as the Chairman of the House Committee on Agriculture,

> "It [the conference committee] therefore amended the Haugen Bill in such a manner as to relieve from regulation these outside industries only when having no affiliation with a packer, by subjecting the packer to complete regulation *no matter what line of business he goes into.*" (Congressional Record, August 9, 1921, Vol. 61, Pt. 5, p. 4781.)

The Packers and Stock Yards Act applies not only to the defendant packers but to all packers engaged in interstate commerce. It is therefore illogical to contend that the statute was not intended to apply to the transactions of packers in the handling of unrelated lines, merely because four out of several hundred packers had been prohibited from selling those articles by an injunctive decree. Whenever the occasion arises the Secretary will un-

doubtedly hold that by reason of his jurisdiction over packers he has jurisdiction over their activities in handling and dealing in the so-called unrelated lines. The Act is complete in itself and provides for full and complete supervision and regulation of all practices of the packers in interstate commerce whether relating to the meat business, unrelated lines or otherwise.

(2) THE ADMINISTRATION OF THE ACT.

Counsel for the Government contend that the prohibitions against unlawful conduct found in the Packers and Stockyards Act are contained in either the Sherman Act, the Clayton Act or the Federal Trade Commission Act, so that no change in conditions has resulted. Counsel ignore, however, the present regulation and supervision of packers and of stockyards by the Secretary of Agriculture. At the present time the Packers and Stockyards Administration with a large force of officials, accountants, engineers, livestock market supervisors, operating all over the country, maintaining offices at the principal markets, keeping daily contact with all market activities and transactions, represents a vitally new element in Governmental control (R. 407). The books and records of stockyard concerns under the jurisdiction of the Secretary are subject to examination. Scales are periodically inspected and tested by experts (R. 407). The organization of the Administration at Washington consists of the Chief of the Division and his assistants, including four separate sections in charge of trade practice matters, audits and accounts, rates and registration and personnel (R. 407).

All buyers employed by packers to buy livestock at public markets are required to register as dealers. The assistant chief of the Packers and Stockyards Administration described the present-day regulation of such buyers as follows:

"The packer buyer, of course, is subject to the same supervision, observation and practically daily contact by the Bureau's supervisor on the various stockyards, as are all other classes of buyers and registrants engaged in business at the market. If there are any complaints regarding their methods of buying, regarding competition, regarding unfair tactics brought to the attention of the supervisor by the sellers on the market or by any producer or shipper, the action of these buyers is promptly investigated and all the facts obtained that can be obtained and reports made to the Bureau." (R. 409-10)

Upon a wealth of undisputed evidence the District Court made its 18th Finding of Fact in this proceeding, as follows:

"18. That the administration of the Packers and Stockyards Act, 1921, by the Secretary of Agriculture, and the division of his Department set up by him therefor, subjects the defendant packers, in common with all other packers subject to the act, to complete supervision of their activities upon public stockyard markets and constitutes a real change in the conditions which existed at the time of the entry of the Decree of February 27, 1920, which change necessarily would greatly limit the power of the defendants to acquire a monopoly." (R. 1113)

The stockyards' rates and charges, which are regulated by the Secretary of Agriculture, include the so-called yardage services, within which are embraced the allotment of pen space, the selling of feed, the use of scales, the furnishing of water and all the various miscellaneous services which stockyard companies usually perform (R. 412).

The law requires that schedules of stockyard rates and charges be filed with the Secretary of Agriculture and published and this is done as a matter of actual practice. Changes in rates and charges can not be made without notice to the Secretary and he may, either on complaint or

on his own motion, conduct an inquiry with reference thereto. He has power to suspend new rates and charges, to conduct hearings with reference thereto, and to fix the charges which may be made (R. 412). His power to establish rates and charges was upheld by this Court in *Tagg Bros. & Moorehead v. United States*, 280 U. S. 420.

Because of the enactment of the Packers and Stockyards Act and the administration thereof, yardage charges are no longer arbitrary as was charged in the petition of 1920 (R. 9). Charges for feed and other services cannot now be fixed by the stockyard companies (R. 10). All charges of every kind made by a stockyard company are now regulated and established by a Department of the Government. The stockyards are no longer a "potential means of favoritism in dealing with commission men and of influence over them" as the Government alleged in 1920 (R. 12). They no longer constitute a power to grant monopolies or a means to prevent the establishment of new packing plants or to hamper the growth of those in existence, as was charged in 1920 (R. 12). The conduct and operation of stockyards, whether owned by packers or others, is subject to the constant and daily observation and supervision of the Department of Agriculture. Under present conditions, a packer derives no advantage whatever from the ownership of a public stockyard except the profit that may be earned on investment and that profit is limited and regulated in the same manner as the profit of public utilities. The possibility that any stockyard company might be used to promote a monopoly in the buying of livestock has completely disappeared as a result of events subsequent to the decree.

J. THE ARMOUR-MORRIS PROCEEDING.

On March 24, 1923 Armour and Company bought the business and physical properties of Morris and Company. (R. 964) The Secretary of Agriculture, acting under the Packers and Stockyards Act of 1921, filed a notice and

complaint against Armour and Company charging that the purchase of Morris and Company would have the tendency or effect of restraining interstate commerce and of creating a monopoly in the purchase of livestock and in the sale of meat and other livestock products, contrary to the provisions of the Packers and Stockyards Act. Armour and Company filed an answer to this notice and complaint and hearings were held commencing on April 30, 1923 and continuing to October 31, 1924, and a record was made consisting of 12,265 pages of testimony and several hundred exhibits (R. 961-965). On September 14, 1925 the Secretary of Agriculture, rendered his decision and dismissed the proceedings because the charges made by the notice and complaint were not sustained by the evidence. In the conclusion and order of September 14, 1925 by which the proceeding was dismissed, the Secretary of Agriculture said:

> "The undisputed evidence shows that competition on the whole in the sale of meats and meat food products in interstate commerce has not been diminished. (R. 967.) * * * Much evidence was introduced both by the Government and the respondents as to the effect of competition before and since the acquisition. The overwhelming weight of testimony is in favor of the view that competition has not been materially lessened by reason thereof, either in the buying of livestock or the sale of the meat or meat products thereof. Scores of independent packers were called by the respondents and they all testified that in the handling and sale of meat and meat food products competition has been keen and active. Many large retail dealers scattered throughout the country were placed on the stand by the respondents and they testified that competition was keen and active and that no unfair practices or coercive methods had been engaged in by Armour and Company." (R. 968)

The highly competitive nature of the packing industry was thus convincingly established as existing subsequent

to the date of the entry of the 1920 decree, The facts proved in the Armour-Morris proceeding were such that the Secretary of Agriculture, in a proceeding instituted by himself, was enabled to say that the overwhelming weight of evidence established that competition was not materially lessened by the acquisition of the third largest meat packer by the second largest meat packer in the United States.

K. THE RECORD CONTAINS NOT ONLY PROOF, BUT AN ADMISSION BY ALL PARTIES, THAT THERE IS NO MONOPOLY IN THE MEAT PACKING INDUSTRY AT THE PRESENT TIME.

"It is conceded that there is today no monopoly in the meat packing industry". (Opinion of District Court, R. 1043).

When the Government filed its petition in 1920 it alleged that the defendant packers had acquired a monopoly in the meat packing industry and that they were about to extend such monopoly to other foods. The same Government which alleged in the petition of February 27, 1920 that the defendants had "eliminated competition in the meat products" (R. 17), entered into a stipulation during the trial of this cause that all meat packers in the United States

> "* * * owned and controlled independently of each other are in active competition with each other in the purchase of livestock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell." (R. 558)

The record shows without dispute that Swift, Armour, Wilson and Cudahy are "owned and controlled independently of each other" (R. 646, 613, 710, and 681), and the trial court found:

> "1. That defendants Swift & Company and its subsidiaries, Armour and Company and its subsidiaries, Cudahy Packing Company and its subsidiaries and

Wilson & Company and its subsidiaries, considered as four entities, are each owned and controlled independently of each other'' (R. 1110).

Error has not been assigned by any party to this finding (R. 1118-25). Therefore, all parties to this cause have admitted that active competition exists among the defendants as well as among all the 998 packers registered under the Packers and Stockyards Act (R. 411, 558) and all intrastate packers shown by the record.

This stipulation was not entered into until after the appellees had called as witnesses numerous competitors, who testified without exception to the fact which the Government and the interveners subsequently admitted. (Frederick S. Snyder, Batchelder Snyder Door & Doe Co., Boston, R. 457; Abraham R. Goldberg, Alabama Packing Company, Birmingham, R. 429; Andrew P. Miller, American Packing and Provision Company, Ogden, Utah, R. 430; Henry Fischer, Henry Fischer Packing Company, Louisville, Ky., R. 432; David G. Madden, East Tennessee Packing Company, Nashville, R. 433; Geo. L. Heil, Heil Packing Company, St. Louis, R. 437; Sederin L. Frey, L. E. Frey & Sons, New Orleans, R. 438; Henry A. Schanz, Cleveland Provisions Company, Cleveland, R. 439; Thos. W. Talliaferro, Hammond Standish & Company, Detroit, R. 442; Henry G. Neuhoff, Neuhoff Packing Co., Nashville, Tenn., R. 451; Jos. P. Murphy, Blayney-Murphy Company, Denver, R. 454; Paul W. Trier, Arnold Bros., Chicago, R. 456; Frank A. Hunter, East Side Packing Company, St. Louis, R. 425; Oscar G. Mayer, Oscar Mayer & Company, Chicago, R. 419.)*

*There appears in the record by stipulation the testimony of 18 additional competitors regarding the active competition existing in the meat packing industry: T. Henry Foster, R. 548; John W. Rath, R. 549; Wm. E. Price, R. 550; Frank M. Firor, R. 553; Bernard J. Brennan, R. 554; B. C. Dickinson, R. 554; Hiram R. Elliott, R. 554; Morton Fox, R. 555; George L. Franklin, R. 555; Jos. A. Gallagher, R. 555; Max Hahn, R. 555; Jay C. Hormel, R. 556; Myron McMillan, R. 556; Augustus Miller, R. 557; J. C. Payton, R. 557; A. J. Riester, R. 557; Homer H. Smith, R. 558; and Frank J. Sullivan, R. 558; and also the testimony of 83 live stock producers that they encounter keen and active competition for the purchase of their live stock (R. 559-64).

The Government did not produce, and presumably could not have produced, a single competitor of appellees to testify to lack of competition in either buying or selling at any place in the United States, or that a monopoly exists or might be acquired in the meat packing industry. Neither did the wholesale grocers, who profess intense interest in this case, produce any such witness, despite the fact that there are 6,000 wholesale grocers in the United States. The assumption that they were unable to produce any such witnesses is justified (*United States v. United States Steel Corporation*, 251 U. S. 417). An announcement of the Attorney General was read at the beginning of the hearing to the effect that it was his intention to present to the court every justifiable argument and fact tending to show that the decree should not be modified (R. 388). Had the Government or the interveners been able to locate one meat packer in the United States to testify that there was a lack of competition, or an actual or threatened monopoly, it is fair to assume that the witness would have been called.

In spite of the admission that no monopoly exists in the packing industry, Government counsel maintain that the defendant meat packers have a dominating power. They quote (Brief, p. 37) the testimony of the President of The Great Atlantic and Pacific Tea Company to support a claim that large chain store organizations are dependent upon the defendant packers for their meat supplies. This Government witness testified that in the eastern division his company bought "about 90 per cent" of its meats from "the big four" and that the loss of these channels would cause his company tremendous embarrassment. There is no necessity to indulge in generalities as to about how much of the Atlantic & Pacific's meat business is enjoyed by the so-called "big four." The Government introduced in evidence exact and authentic information on this subject (R. 496), in the form of a letter dated October 13, 1930, from the National Fresh Meat

Representative of The Great Atlantic and Pacific Tea Company to Mr. Teegarden, Special Assistant to the Attorney General, reading in part:

> "From the figures available, the products handled in our Meat Department by the various packers would be divided approximately as follows:

Swift and subsidiaries	14%	of our business
Armour and subsidiaries	12%	
Wilson and Cudahy	8½%	
The Other Independents	65½%	
Total	100%	

> "In reference to your last paragraph, it would be quite impossible for us to furnish you with a complete list of the Independent packers. We estimate very conservatively that in our fifty units we are doing business with at least three hundred Independent and local slaughterers and sausage makers. The New England Division alone last month did business with over fifty-five local concerns." (R. 1029).

In support of the contention that the appellees have a dominating position, the Government states that Swift and Armour each control over 50 subsidiary corporations (Brief, p. 33), and a list of such corporations is set forth in an appendix to the Government brief (Brief, pp. 76-79). The fact that the appellees carry on business in every State of the Union and in foreign countries, indicates the necessity for subsidiary corporations. The number of subsidiary corporations is not a test of power, but if so, we can find greater power in National Dairy Products Company, which has 73 subsidiary corporations (R. 839-840), and in the Borden Company, which has 124 subsidiary corporations (R. 846). Furthermore, the petition of 1920 charged that at that time the defendants had control of or an interest in 762 different corporations (R. 18).

Repeatedly appellants stress the size of appellees and their business, for the obvious purpose of suggesting that for this reason they should remain under the 1920 injunction unmodified. A complete answer to this contention is found in this Court's decision in *United States vs. United States Steel Corporation,* 251 U. S. 417, 451:

> "But we must adhere to the law, and the law does not make mere size an offense or the existence of unexerted power an offense. It, we repeat, requires overt acts, and trusts to its prohibition of them and its power to repress or punish them."

The trial court made the following findings of fact as to the absence of monopoly, and the existence of competition in the packing industry:

> "5. That defendants in the sale of their products are in keen and active competition with each other and with numerous others selling similar products and their competitive practices in the sale of their products are fair and lawful.
>
> "6. That in the transaction of their business defendants' treatment of customers is fair and lawful.
>
> "7. That none of the defendants has a monopoly in the meat packing industry.
>
> "8. That neither the four defendants, nor any two of them, are combined to monopolize or to attempt to monopolize the meat packing industry." (R. 1111)

The threatened monopoly of the *meat-foods* industry no longer exists; changed conditions have rendered it impossible. With its disappearance there went that which it was feared would grow from it and feed upon it, viz.: monopoly of *non-meat-foods.* Such a thing is now unthinkable. No injunction can possibly be thought necessary to prevent it. Such an injunction can only be destructive of competition, detrimental to the public, and unjust to the enjoined.

Counsel claim, however, that the present highly com-

petitive condition of the packing industry was brought about by the consent decree. Government counsel state at page 65 of their brief:

> "If no monopoly in the meat business exists today and if unlawful practices have been discontinued, the presumption is that this is due to the restraints imposed by the decree. We submit that the effectiveness of the decree cannot be urged as a ground for gradually whittling it away."

We shall not pause to discuss the fact that Government counsel who say at page 65 of their brief that the decree has been effective, say at page 11 of their brief that the decree has been avoided, and shall proceed to reply to the argument that the decree has been so effective that it is responsible for the present highly competitive condition of the packing industry and therefore should not be modified. The first paragraph of the consent decree is nothing more than a substantial repetition of the language contained in sections 1 and 2 of the Sherman Anti-Trust Act (R. 154). The sixth paragraph of the decree of 1920 restrains the defendants from operating retail markets (R. 161) but none of them had ever been engaged in the business of selling meats at retail, and it is difficult to appreciate how a prohibition against engaging in a business never carried on by them could be responsible for the present highly competitive conditions. Paragraph ninth of the decree enjoins the defendants from carrying on, or using, "any illegal trade practices of any nature whatsoever" (R. 162), but this language is not nearly as comprehensive as the prohibitions of the Packers and Stockyards Act of 1921 (42 Stat. 161). The decree of 1920 also directs the defendant packers to dispose of their interests in public stockyard market companies, stock yard terminal railroads and market newspapers (R. 154, 162-3) and it may be contended that this mandatory provision has been responsible for the competitive condition now exist-

ing in the packing industry. However, after the entry of the decree it appeared that the appellees' interest in stockyard companies were not salable. Repeated efforts to sell culminated in advertisements for bids in 28 newspapers with the lack of success reported by the Court's Trustees (R. 996). Furthermore the decree was suspended from May 1, 1925, to July 24, 1929 (R. 194-95). Therefore, that portion of the decree directing the sale of stockyard interests certainly cannot be credited with the present absence of monopoly.

We believe we have demonstrated the invalidity of the Government's contention that the absence of monopoly in the packing industry is due to the existence of the consent decree, but even if the contrary were true, and certain of the restrictive provisions of the decree have become unnecessary, because of the effectiveness of other provisions, then the former may properly and legally be modified or rescinded. If changed conditions remove the danger of monopoly it is immaterial whether brought about by the decree, economic conditions, or otherwise. The important question is whether danger of monopoly has been removed, and if so, the fact that the removal was due to other provisions of the decree which are to remain in effect would not be a ground for the reversal of the amendatory decree of January 31, 1931. No modification of any portion of the decree which relates to the meat packing industry is here involved. We are relieved only from that portion of the decree which prohibited the appellees from dealing at wholesale in the commodities enumerated in the fourth and fifth paragraphs of the decree. Such a modification of the consent decree does not give the appellees any advantage over their competitors, but simply places them on a basis of equality with their competitors who are now free to deal in commodities which under the unmodified decree could not be sold by the appellees.

It is true that by permitting the appellees to engage in the general food business, competition in that industry

is increased, but an increase in competition is desirable and will benefit rather than injure the public at large. Dr. Paul H. Nystrom, Professor of Marketing at Columbia University (R. 690) testified:

> "It is a fact that the addition of larger or more competitive factors necessarily makes for either lower prices or improved service. This is almost an inevitable result of increased competition." (R. 695)

The lower court has modified the decree so as to restore and increase competition in the food industry. The restriction in such competition imposed by the decree of 1920 is contrary to the spirit and purpose of our Anti-Trust laws and could only be justified in 1920 by the then existing threat of monopoly alleged in the Government's original petition. That threat no longer exists. It has vanished so completely that for the first time in history the Government has admitted of record that there is no monopoly in meat packing, and that there is full competition among defendants and all others in the industry.

I. CHANGED CONDITIONS IN THE FOOD INDUSTRY.

(1) THE MAGNITUDE OF THE FOOD INDUSTRY.

The United States Government census of manufactures for 1927 shows that in that year there were in existence 49,787 establishments engaged in the manufacture of food products. (R. 389) The retail food bill of the United States is twenty-four billion dollars annually, of which three billion dollars represents the estimated value of products consumed at the place of production. (R. 691) The remaining twenty-one billion dollars of food is marketed through more than 400,000 retail food outlets (R. 519 and 773).

The food industry is not only of great magnitude from the standpoint of value of production, but also from a territorial aspect. Food is produced on more than 6,000,000

farms in the United States and this source of food supply is supplemented by enormous daily imports. In the nature of things food must be produced in all sections of the country from year to year and from season to season. Foods are largely perishable and the Nation lives upon daily supplies and not upon accumulated reserves.

The total dollar sales of appellees include sales of inedible as well as edible products. Swift's sales of edible products in 1929 amounted to $816,250,000 (R. 954) and Armour's $723,808,394 (R. 938). Although these amounts are large in themselves, they are insignificant when compared to the twenty-four billion dollars representing the Nation's annual food bill.

The changes which have occurred in the food industry during recent years were commented upon in *Wolff v. Industrial Court*, 262 U. S. 522, 538:

> "In the preparation of food, the changed conditions have greatly increased the capacity for treating the raw product and transferred the work from the shop with few employees to the great plant with many. * * * There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply * * * are country-wide, * * * and the danger from local monopolistic control less than ever."

The fact is recognized, both by marketing authorities and business men, that radical changes in competitive conditions have occurred during the past ten years in the manufacture, and in the wholesale and retail selling of foods (R. 519-20, 692, 704).

Among the major changes which have occurred in the food industry are:—

(a). The organization, and particularly the tremendous growth, of regular chain store organizations which function as retailers, wholesalers, and manufacturers of foods.

(b). The organization and development of voluntary chain store organizations which function as retailers, as wholesalers, and to some extent as manufacturers of foods, and,

(c). The organization and growth of large food manufacturers and distributors of food products directly to retailers.

(2) THE GROWTH OF REGULAR CHAINS.

The parties to this cause stipulated that in 1920 there were in existence in the United States 15,000 regular chain grocery stores having sales in that year of $770,000,000, and that by 1929 the number of stores had increased to 60,000 with sales of $3,500,000,000. These 60,000 chain grocery stores are owned by 900 separate corporations and the 70 largest of these corporations own 48,699 stores (R. 567).

The largest chain store organization is The Great Atlantic & Pacific Tea Company. Its sales in 1929 exceeded the sales of either Armour or Swift. Its business has grown from 4,638 stores with sales of $230,420,618 in 1920 to 15,418 stores with sales of $1,053,692,882 in 1929 (R. 494).

The Great Atlantic & Pacific Tea Company now operates stores in 36 States (R. 496). It is not merely an operator of retail food stores, but also a manufacturer. Its present physical properties in addition to 15,418 retail stores include 15 packing establishments under Federal inspection. It had no such plants in 1920 (R. 533). It has 53 general storage and shipping warehouses and had 10 in 1920 (R. 494). It operates 35 bakeries and operated 2 bakeries in 1920 (R. 495). The company had one produce warehouse in 1920 and has 23 at the present time. It also owns and operates 2 butter warehouses, 3 cheese plants,

1 creamery, 1 fish warehouse, 2 laundries, 1 printing plant, 9 general food factories for canning fruits, vegetables, catsup, chili sauce, jams, jellies, macaroni, spaghetti, cocoa, candies, peanut butter, spices and extracts. It also operates 9 milk plants, 7 coffee roasting plants, and 6 salmon canneries in Alaska (R. 495).

The earnings of The Great Atlantic & Pacific Tea Company in the year ended March 1, 1921 were $5,803,333 (R. 496) and for the year ended March 1, 1930 were $26,219,631 (R. 827). Its net worth in 1920 was $22,490,527 and in 1930 was $118,659,567 (R. 827).

The sales of The Great Atlantic & Pacific Tea Company and of each appellee were substantially the same in 1929, all being slightly in excess of $1,000,000,000, but the profits of The Great Atlantic & Pacific Tea Company in 1929 were $26,219,631 (R. 827) as compared with Swift's profits of $13,077,000 and Armour's profits of $9,811,000 (R. 888a). In 1929 the Atlantic & Pacific earned 2.49 per cent on sales and 26.08 per cent on investment (R. 827), whereas in the same year Swift earned 1.25 per cent on sales and 5.78 per cent on investment and Armour earned .98 per cent on sales and 3.54 per cent on investment (R. 888a).

The Kroger Grocery & Bakery Co. of Cincinnati, Ohio is the second largest chain store organization in the food industry (R. 567). It operates slaughtering and meat packing establishments under Federal inspection at Cincinnati and Columbus, Ohio, and a sausage plant at Detroit, Mich. (R. 501). It operates 12 bakeries, 5 dairies, a candy factory, a beverage factory, a coffee roasting plant, a packing plant for olives and other bottled goods (R. 501) and 16 warehouses (R. 828). Its business has grown from 903 stores with sales of $50,705,896 in 1920 to 5,575 stores with sales of $286,611,715 in 1929 (R. 502 and 828). The net worth of the company has increased from $7,695,229 in 1921 to $51,722,895 in 1930 (R. 828). In 1929 its earnings were $5,919,097 representing 2.07 per cent on sales and 13.08 per cent on investment (R. 828).

Safeway Stores, Inc. has grown from 784 stores and sales of $50,536,513 in 1926 to 2660 stores and sales of $213,496,255 in 1929. Its earnings have increased from $371,761 in 1922 to $6,147,313 in 1929, representing 2.88 per cent on sales and 22.85 per cent on investment (R. 829). The company owns and operates 44 warehouses, 15 bakeries, 3 creameries, and a candy factory (R. 565).

American Stores Company had 1223 stores in 1920 and 2644 stores in 1929. Its sales were $103,059,303 in 1920 and $143,346,157 in 1929 and its earnings increased from $2,249,454 in 1920 to $6,594,822 in 1929 (R. 830). The company operates 8 bakeries, 8 wholesale warehouses, a milk plant and a fruit and vegetable canning plant (R. 564).

First National Stores, Inc. was incorporated December 28, 1925. It operated 1717 stores in 1927 and 2659 stores in 1930. Its sales were $48,976,740 in 1926 and $107,635,216 in 1930 (R. 831). The company has 3 manufacturing and distributing plants, one of which contains a bakery having a capacity of 52,000,000 loaves yearly (R. 565, 831).

The financial record of other large grocery chain organizations appears in the record at pages 826a to 828. Each and every organization shown earns substantially more on sales and on investment than any of the defendant packers (R. 826a-828).

(3) THE GROWTH OF RETAIL FOODS OUTLETS CONTROLLED BY VOLUNTARY CHAINS.

During the last decade, and especially during the last five years, there has also been a remarkable growth in the number and in the business of the so-called voluntary chain stores operating in the food industry. The voluntary chain is defined in the record as:

> "a group of independently owned retailers who cooperate in joint buying, joint advertising or in joint or group control of the operations of their retail stores in retail management." (R. 509)

There are three groups or classifications of voluntary chains. The most important group is that which is sponsored by wholesale grocers who obtain concentration of purchases from a group of retailers in return for merchandising and managing assistance which enables the retailers to operate their stores more efficiently. (R. 509) The second group of voluntary chains is what is commonly called a retailer-owned wholesaler, being a regular wholesale grocery company having a capital stock owned entirely or largely by retail grocers (R. 509). The third group consists of organizations in which a number of retail grocers combine for the purpose of group buying, or group advertising, but without ownership of wholesale grocery facilities (R. 509).

There are in existence at the present time 551 voluntary chain organizations with a total membership of 59,640 (inadvertently stated as 29,000 in the court's Op. R. 1046), separate retail grocery stores (R. 510). The growth of voluntary chain stores in the food field has been even more rapid than the growth of regular chains (R. 510-11) and the principal growth has been during the last 5 years (R. 519).

The largest voluntary chain store organization is the Independent Grocers' Alliance of America commonly known as the I. G. A., which was created in 1926 (R. 762). The organization embraces 49 wholesale grocers with 87 wholesale establishments, and approximately 9,000 retail stores doing a yearly business of about $526,000,000 in 37 different states (R. 762).

The Red and White Corporation, organized in 1921, is an affiliation of 30 wholesale grocers having from 60 to 70 wholesale establishments and a retail membership of from 8,000 to 10,000 stores of which 4,000 or 5,000 are located in Canada (R. 783).

At the present time about 25 per cent of the total retail grocery business of the United States is done by the 60,000 retail members of the 551 voluntary chain organizations.

Approximately 35 per cent of the total retail grocery business of the United States is controlled by the 60,000 retail stores owned by approximately 900 regular chain store organizations (R. 519). Therefore at the present time 60 per cent of the retail grocery business of the United States is in the hands of approximately 1,500 chain organizations.

(4) THE GROWTH OF MANUFACTURERS AND WHOLESALE DISTRIBUTORS OF FOODS.

The chain store development of the last ten years has been accompanied by tremendous growth in concerns manufacturing and selling food products directly to retailers (R. 520, 701). In addition to the powerful chain organizations there are now in existence many general food corporations having greater financial strength and greater earning power than any of the defendants.

National Dairy Products Corporation was incorporated in December, 1923. It is an operating and holding company and has 73 subsidiary corporations (R. 839-40). The business of the company includes the wholesale and retail distribution of milk, cream, butter and other dairy products and the manufacture and wholesale distribution of sausage, ice cream, beverages, condensed milk, butter and milk by-products (R. 499 and 839). The company is rated as the largest manufacturer of ice cream in the United States (R. 499). Its sales in 1924 were $91,064,305 (R. 842) and in 1929 $300,000,000 (R. 500). In May of 1930 the company acquired the Kraft-Phenix Cheese Corporation and the sales of that company in 1929 were $80,000,000 (R. 500).

The earnings of National Dairy Products Corporation were $4,882,238 in 1924 and $21,574,240 in 1929 (R. 842). This represents a return of 7.19 per cent on sales and 32.51 per cent on investment. The company's net worth was $9,703,773 in 1924 and $110,603,066 in 1930 (R. 842).

The Borden Company commenced business in 1899 and embarked on an expansion program in 1928. It now has

124 subsidiary corporations engaged in the manufacture and sale of condensed, evaporated, malted and dried milk, cheeses, caramels, mince meat and ice cream and in the purchase and distribution of cream, butter, eggs and other farm produce (R. 846). The sales of the Borden Company have increased from $120,293,572 in 1920 to $328,466,989 in 1929 and its earnings have increased from $2,818,860 in 1920, representing 2.34 per cent on sales and 7.80 per cent on investment, to $20,403,725 in 1929, representing 6.21 per cent on sales and 21.96 per cent on investment. The company's net worth has increased from $36,141,852 in 1920 to $131,874,740 in 1930 (R. 851).

The General Foods Corporation is the successor of the Postum Cereal Company. It commenced an expansion program in 1925 when it acquired the Jell-O Company. Two additional corporations were acquired in 1926, 4 in 1927 and 3 in 1928 (R. 854). In 1929 the name of the company was changed to General Foods Corporation and 12 additional corporations were acquired. As a result of these acquisitions the company now handles 68 different branded products as compared with 6 items dealt in by the predecessor company in 1924 (R. 854-56).

In 1929 General Foods Corporation acquired Batchelder, Snyder, Dorr and Doe Company of Boston, a large meat packing and food establishment which in turn owns through its subsidiary Frosted Foods Co., Inc., the Birdseye Quick Freezing Process (R. 856-7).

The sales of General Foods Corporation have increased from $21,910,177 in 1920 to $128,036,791 in 1929. Its earnings in 1920 were $1,119,902 and in 1929 were $19,422,314 (R. 858). The 1920 earnings represent 5.11 per cent on sales and the 1929 earnings 15.17 per cent on sales. The return on investment in 1921 (the first year as to which the company's investment is shown by the record) was 18.83 per cent and in 1929 was 40.54 per cent (R. 858).

The record contains proof of the growth and financial history of 8 food corporations and shows that their rate

of earnings on sales and on net worth is many times in excess of the present rate of earnings of the defendant packers (R. 838a-866 and 888a).

Counsel for appellants seek to minimize the importance of the tremendous growth of general food corporations on the alleged ground that they are not comparable to the appellees in size. Counsel for the Government say (brief 56-7), that the sales of the largest of these companies are not more than $350,000,000 a year, which is only 35 per cent of the sales of either Armour or Swift. Counsel ignore the fact that the large volume of the sales of meat packers, in dollars, is due to the fact that their raw material, livestock, is costly. The Census of Manufactures for 1927 shows that the total selling value at the factory of the products manufactured at 1250 slaughtering and meat packing establishments was $3,057,215,718, whereas the cost of the livestock, supplies, fuel and power utilized to manufacture those products was $2,663,740,403 (R. 390). In other words the total selling value exceeded the cost of materials by only 14.75 per cent. The comparative sizes of corporations can not be judged by a comparison of their dollar sales unless the corporations are engaged in the same industry. The total sales of the Coca Cola Company in 1929 were only $39,260,813 but its net earnings were $12,758,276 (R. 574), whereas Armour earned less money on sales of more than $1,000,000,000 (R. 888a). The sales of General Motors Corporation in 1929 were $1,504,404,472 and its earnings were $247,317,743 (R. 586), whereas 832 separate meat packing corporations reporting to the Packers and Stock Yards Administration in 1929 earned less than 1/4 of this amount on sales nearly three times as great (R. 817).

M. UNDER PRESENT CONDITIONS THE ACQUISITION OF A MONOPOLY IN THE FOOD INDUSTRY IS NOT POSSIBLE.

The modification of the decree of 1920 permits the defendants to diversify their business in accordance with

modern trends and to handle food items other than meats. In so doing they enter a competitive field radically different from that which existed in 1920. Ten years growth and development of concerns engaged in manufacturing, wholesaling and retailing foods has completely altered the 1920 situation. Instead of the comparatively few chain organizations and chain stores in 1920, there are now approximately 120,000 strongly controlled regular and voluntary chain grocery stores, in control of 60 per cent of the total retail grocery business of the Nation (R. 567, 510, 519). Instead of a Great Atlantic & Pacific Tea Company earning less than half as much as Swift & Company in 1920, there is a new Great Atlantic & Pacific Tea Company earning in 1929 twice as much as Swift, and more than Swift, Armour and Cudahy combined (R. 827). The National Dairy Products Company, earning $21,574,240 in 1929, has replaced a predecessor corporation which earned $761,293 in 1920 (R. 842). National Biscuit Company earned $21,422,357 in 1929 instead of $5,543,120 in 1920 (R. 574, 582). The Borden Company earned $20,403,725 in 1929, compared with $2,818,860 in 1920 (R. 851), and Standard Brands earned $19,820,669 in 1928 compared with $4,680,250 in 1921 (R. 853). The Postum Cereal Company of 1920, with earnings of $1,119,902, emerged as the radically different General Foods Corporation in 1929, earning in that year $19,422,314 (R. 858).

The defendants upon entering the wholesale food business will find that the extent of the selling field is very different than that of 1920. The chain store organizations, controlling 60 per cent of the retail grocery business, do their own wholesaling, and to the extent necessary supplement it with their own manufacturing activities. The 120,000 chain stores will not be generally available to the defendants as customers for groceries, but will continue their present methods of manufacturing foods extensively and buying the remainder from the same source where the

defendants will have to buy, namely, the manufacturers of foods.

Upon embarking in the general food business, the defendants will not only encounter the competition of such strongly entrenched corporations as National Dairy Products Company, the Borden Company, General Foods Corporation, and others, but will find themselves compelled to buy the branded products of these companies. If the defendants are to cater to the public demand for the innumerable Borden milk products, they must of necessity deal with The Borden Company. In order to handle the widely known Fleischmann yeast, Royal Baking Powder, and Chase & Sanborn coffee, purchases will have to be made from Standard Brands (R. 852). Postum Cereal, Maxwell House coffee, Sanka coffee, Walter Baker's cocoa, Jello, Log Cabin Syrup, Calumet Baking Powder, Grape Nuts, Post Toasties, Diamond Crystal Salt, and many other well known products can only be obtained from General Foods Corporation (R. 854-56).

The petitioning defendants since 1920 have demonstrated an inability to hold their own in the meat packing industry in which they have been engaged for many years. Their smaller competitors have forged ahead, both in growth of business and in earning power. It is simply inconceivable that the four defendants, with a background of losses of $61,000,000 in 1921, a reorganization in 1922, a forced sale in 1923, and a bankruptcy in 1924, could now enter the general food business and in any way or to any degree, crush or oppress or threaten or even inconvenience the large and financially powerful corporations now engaged in the food industry. The 1920 monopoly in the packing industry and the 1920 potential monopoly in the food industry, then asserted by the Government to exist, do not now exist,—as a result of changed conditions.

The record proves a lack of power by the defendant packers not alone in the meat industry but also in the general food industry. The petition of 1920 alleged that the defendants had

"set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese and other substitute foods * * *" (R. 17)

The petition did not pray that the defendants be enjoined from dealing in poultry, butter, eggs or cheese and continuously since the decree was entered the appellees have handled these commodities. The increase or decrease of the appellees' volume of business in these commodities affords a basis for measuring their power or lack of power with reference to food items other than meats.

The United States total production of butter in 1920 was 1,558,380,000 pounds and Swift produced 4.81 per cent thereof. In 1929 the total production of butter was 2,177,027,000 and Swift produced 5.59 per cent thereof (R. 954-5). Armour's production was 6.6 per cent of the total in 1920, and 4.6 per cent in 1929 (R. 942a).

The total consumption of cheese in the United States in 1920 was 405,545,000 pounds and in 1929 was 657,717,000 pounds (R. 955). Swift's sales were 16.60 per cent of the total in 1920 and 11.95 per cent in 1929 (R. 955), and Armour's sales of cheese were 20.0 per cent in 1920, and 10.0 per cent in 1929 (R. 942a).

The total poultry production was 1,310,000,000 pounds in 1920 and 2,323,000,000 pounds in 1929 (R. 955). Swift's sales decreased from 5.73 per cent in 1920, to 5.12 per cent in 1929 (R. 955), and Armour's from 4.8 per cent in 1920 to 3.0 per cent in 1929 (R. 842a).

The total egg production in 1920 was 1,607,000,000 dozens and in 1929 was 1,951,000,000 dozens (R. 956). Swift's sales were 5.35 per cent of the total in 1920, and 6.20 per cent of the total in 1929 (R. 956). Armour's sales were 4.2 per cent of the total in 1920, and 3.4 per cent of the total in 1929 (R. 942a).

The Government contends at page 33 of its brief that the appellees have "pursued an aggressive expansion

policy'' since 1920, and to substantiate this claim states that Swift and Armour have purchased numerous produce concerns during the last ten years. In spite of the acquisition of these produce plants, during this ten year period the business of Swift decreased in cheese and poultry and increased but slightly in butter and eggs; the business of Armour in butter, eggs, cheese and poultry has substantially decreased since 1920. The produce plants were acquired in an effort to retain the appellees' volume of business and the attempt has, on the whole, been unsuccessful.

There is no lack of food production in this country. On the contrary, for the past ten years public attention has been sharply drawn to the plight of those who have produced a surplus in crops such as grain, fruit and vegetables. In recent years Congress has enacted many laws designed to solve difficulties of over-production and inadequate distribution of food crops. The Capper-Volstead Act (42 Stat. 388) relieves farm cooperative organizations from the provisions of the anti-trust laws in marketing their products. The Agricultural Marketing Act (46 Stat. 11), is designed to promote the effective merchandising of agricultural commodities and to protect, control and stabilize commerce in the marketing thereof. This statute created the Federal Farm Board to carry out the purposes of the statute and an appropriation of $500,000,000 was placed at its disposal. Vast sums have since been expended by the Board but it is, at least, debatable whether this Federal agency, supported by Congress and having unlimited power and tremendous resources, has been successful in controlling prices even as to comparatively few agricultural commodities. If the Federal Farm Board, under present conditions, with the vast resources of the Government back of it cannot control prices there is little likelihood that either of the appellees can do so.

Overproduction of food was illustrated by H. C. Merritt, Jr., and George N. Pharr who testified that in California the equivalent of 7,000,000 cases of No. 1 peaches out of a total crop of 20,000,000 cases fit for canning, were allowed to rot. This was accomplished by a control agreement under which the co-operative growers were paid by the canners for the 7,000,000 cases which were permitted to rot, so that the canning industry and these growers would not be injured through the marketing of a surplus (R. 424, 714). Naturally, these witnesses were strongly of opinion it was necessary to get additional distribution, both foreign and domestic; that were there more dependable marketing outlets for canned fruits, a greater range of advertised brands, and more intensive and wider sales effort, whereby more retail customers and dealers could be reached more frequently, it would go far toward providing a remedy for their problems of overproduction, inadequate distribution, and waste of valuable foods (R. 424; R. 714).

The decree of 1920 restrains the defendants from dealing in canned vegetables (R. 156). The Government witness, James Moore, President of Snyder Packing Corporation at Rochester (R. 788), testified that there are from 2,500 to 2,700 fruit and vegetable canners in the United States operating from 3,500 to 4,000 separate canneries (R. 792). He testified that if the packers should manufacture canned goods—

> "I can see no way in which they would have any advantage in the production viewpoint over the small canner because in the nature of canning, the crops have to be grown in separate localities spread all over the country. The canning units are necessarily small. The raw material, especially vegetables, can not be transported long distances and I can see but little, if any, advantage for the packers regardless of their resources, if they attempt to pack in very large volume, as compared with the individual canner who is packing only the individual volume that is consistent with his little territory surrounding the hamlet where his canning factory is situated (R. 791-2).

Mr. Moore further testified that in former years his concern sold its output directly to wholesalers, but that at the present time only 60 per cent of the volume is sold to wholesalers, and 25 per cent to retail chain stores, and 15 per cent to other retail organizations having sufficient volume to buy directly (R. 792).

Frederick S. Snyder, former Chief of the Meat Division of the United States Food Administration, and now President of Batchelder, Snyder, Dorr & Doe Company of Boston (R. 457), testified:

> "I would say that it is impossible under present-day conditions for any group of men in the food industry to acquire a monopoly of the food industry of the United States." (R. 467-8)

Dr. Paul H. Nystrom, Professor of Marketing at Columbia University (R. 690), testified:

> "With conditions as they are today I do not see the possibility of the elimination of competition, or the crushing of competitors, in the food industry. In the first place, the large number of concerns that are in the business preclude that possibility. In the second place, the relative ease with which new concerns may be established, or expand its present activities or capacities, and the resistance that would be met by any concern seeking to restrict competition by coercive measures from the distributive organization, as well as the consumers themselves who if an attempt were made to force them to buy any such product at prices that might seem unreasonable, would very quickly change, in my opinion, to other diets, to other foods, and adjust themselves so they would not purchase the articles that were produced or marketed by an organization attempting a restriction of competition and whatever goes with that. I do not think that it is possible for any concern or group of concerns to maintain artificial and arbitrary prices in the food industry." (R. 696)

To the same effect is the stipulated testimony of Dr. H. H. Maynard, Professor of Marketing, Ohio State University (R. 703) and Dr. Fred E. Clark, Professor of Marketing, Northwestern University (R. 704).

From the evidence in the case the District Court quite properly found as a fact:

> "That if defendants were to engage in handling food products additional to products they are now dealing in, there is no probability that they could or would acquire a monopoly of, or control the quantity and prices of, the foods produced and/or consumed in the United States." (R. 1112)

V. The Exclusion of the Appellees as Competitors in the General Food Industry is Injurious to the Public and Unjust and Inequitable to Appellees.

We have demonstrated that active and extensive competition now exists in both the meat packing industry and the general food industry, and that the danger of a food monopoly which the Government feared in 1920, does not now exist. A court of equity should not continue the prohibition of a lawful act—the selling of food—after the necessity for the prohibition has ceased. Proof of this present lack of necessity is of itself sufficient to require an affirmance of the modification granted by the trial court. Proof of the further fact that the exclusion of the defendant-packers as competitors in the food industry is injurious to the public, and unjust to defendants, is not an essential prerequisite to modification, but is an additional reason why modification should be granted by a court of equity.

A monopoly does not now exist in either the meat packing industry or the food industry and that fact having been both proved and admitted, there is no reason why the public at large should be deprived of the benefits of an increase of competition in the food industry. The fact that

the public in general is injured by a substantial restraint of competition in an essential industry is not reasonably debatable. "* * * lower prices or improved service are almost an inevitable result of an increased competition." (Dr. Paul H. Nystrom, R. 695).

The decree prevents defendants from doing a lawful act though there is no longer any necessity for the prohibition and the unnecessary prohibition of any lawful act constitutes a legal prejudice. Moreover, the record shows beyond dispute that because of changes in conditions, the appellees are being subjected to reductions in profits and constantly increasing cost of operating branch houses and car routes, which can only be obviated by handling a diversified line of products. The effect of changed conditions on the appellees' distributing system and the extent to which the appellees are being injured cannot be appreciated without a knowledge of the nature of and necessity for this distributing system.

Approximately 70 per cent of the nation's livestock is produced west of the Mississippi River whereas approximately 70 per cent of the consuming population is located east of the Mississippi River (R. 418, 485). National packers must have an adequate distributing system in order to move the surplus of meat from the area of overproduction to the area of consumption and to give their customers daily supplies of a perishable commodity. This distributive system, indispensable to the business of a national packer, consists of branch houses and car routes.

A branch house is an establishment used to sell meat at wholesale to the surrounding trade area. The physical properties of a branch house consist of a building containing refrigerator space, dry storage space, loading and unloading docks, office space and space for the storage of delivery equipment. Some branch houses are also equipped with smoke houses and machinery for making sausage and slicing bacon (R. 654).

On November 1, 1929, Swift & Company owned and

operated 431 branch houses and 5509 refrigerator cars (R. 956). On September 1, 1930, Armour and Company had 391 branch houses and on November 2, 1929, had 6766 refrigerator cars (R. 943-4). The Armour branch houses represent an investment of $26,307,257 and are operated by 9,924 employes at an annual cost of $30,000,000 (R. 654).

Refrigerator cars are used in shipping meats to branch houses and to car lot customers and also in the operation of car routes. A car route is a group of towns located along a railway line in territory too sparsely populated to warrant the operation of a branch and too remote from existing branch houses to be economically served by them. Salesmen solicit orders in these towns and deliveries of meats are made from refrigerator cars commonly called route cars which travel along the railroad line on regular schedules, stopping at each town to unload the meats previously ordered (R. 665).

The earning power of this large and costly distributing system owned by appellees and essential to the future conduct of their business, has been gravely affected by the unforeseen revolutionary changes which have occurred in food distribution since 1920.

Prior to 1920 chain grocery stores were a relatively small factor in the distribution of food products and an altogether negligible factor in the sale of meats at retail. The recent growth and development of the general food stores (R. 692, 520) have resulted in an enormous increase in the sale of meats by chain organizations. In 1920 there were 15,000 regular chain grocery stores with 1200 fresh meat departments and by 1929 the number of stores had increased to 60,000 and the number of fresh meat departments had increased to 15,800 (R. 567). This growth in the total number of stores is a 300 per cent increase but the growth in the number of fresh meat departments represents an increase of 1216 per cent.

The growth of the general food stores selling meats as

well as groceries, is also proved by the statistics of 70 individual chain organizations shown at pages 567-568 of the record. The first store of The Great Atlantic & Pacific Tea Company containing a fresh meat department was opened in 1924 (R. 494) and by 1929 the company was operating 3,851 combination stores containing fresh meat departments (R. 567), and its meat sales in that year aggregated $110,082,602 (R. 496). The Kroger Grocery & Baking Company operated 276 combination food stores in 1920 and 3,191 combination food stores in 1929 (R. 502) and its sales of meats increased from $7,313,140 in 1920 to $51,984,005 in 1929 (R. 724).

The voluntary chain grocery stores are a development of the last five years (R. 519) and there are now approximately 60,000 such stores (R. 519) and it is estimated that 46.7 per cent of the total or approximately 28,000 stores have fresh meat departments (R. 512, 517).

There are also 3,632 chain meat stores, 2,075 chain restaurants and cafeterias and 523 chain hotels (R. 569).

Summarizing the foregoing, chain organizations control at the present time more than 50,000 retail outlets for the sale or consumption of fresh meats. This rapid growth in the number of chain retail meat outlets has brought about a tremendous concentration of buying power in the field of retail meat distribution to the detriment of appellees.

Chain store buying of meats is not done by local store managers but through a central office. The meats are usually shipped from the selling packing plant to a chain warehouse from which distribution is made to the organization's stores located in the district served by the warehouse (R. 655). This new method of doing business does not have an adverse effect on a meat packer not maintaining a branch house system but conforms to his usual method of doing business. In the case of appellees it causes a loss of volume in branch houses and this result follows regardless of whether the appellees or other pack-

ers secure the chain store order. In either case the meat does not pass through the branch house because of the direct shipment and branch house volume is therefore reduced (R. 656).

A further change of major importance affecting the appellees is found in the ever-increasing extent to which chain organizations are performing packing house operations. The Kroger Grocery & Baking Company is an outstanding example of a chain store engaged in the operation of packing plants. The Kroger Company operates slaughtering and meat packing establishments at Cincinnati and Columbus, Ohio, and a sausage plant at Detroit, Michigan. The plant at Columbus has been opened since 1920 (R. 501).

The converse of the Kroger situation is illustrated by the entry of meat packers into the retail field.

In 1926 Adolf Gobel, Inc., a large meat packer with plants in New York, Washington, D. C., Mason City, Iowa, and other places embarked in the retail field by acquiring the Merkel chain of 30 meat stores having sales of more than $2,000,000 a year (R. 551-2).

Hygrade Food Products Corporation was organized in 1927 and acquired 9 concerns engaged in the packing and food business. The company also acquired the five American packing plants formerly owned by Allied Packers, Inc., located at Chicago, Detroit, Buffalo, Wheeling and Topeka. On February 11, 1928, this meat packing company entered the retail field by acquiring the Bronx Provision Company including a chain of retail stores (R. 879).

Frye and Company of Seattle, Washington, a slaughterer and meat packer, operates 64 retail stores. The total annual sales of Frye & Company are $12,000,000 of which $3,000,000 is sold at retail (R. 532).

Carstens Packing Company, a slaughterer and meat packer with plants at Tacoma and Spokane, operates 48 retail stores and 40 per cent of its products are disposed of at retail (R. 532).

When a chain store organization engages in slaughtering, or a packing company engages in retailing, the retail outlets supplied by the meats thus produced are completely lost to the appellees as possible customers. The Kroger Grocery and Baking Company produced in its slaughtering establishments in 1929 meat and meat products having a wholesale value of $10,464,362 (R. 724). This product was sold through the Kroger retail stores and neither the appellees nor any other packer had an opportunity to compete for that business.

The most profitable part of the packing industry is the processing of meats (R. 1036a, 528, 622, 656, 682), and this field of the industry has been substantially invaded by chain store organizations. Chain organizations are now operating 30 processing plants under Federal inspection as compared with 8 such plants operated by them in 1920 (R. 533). The record contains a list of 83 chain store organizations which perform meat packing operations (R. 921-936).

When a chain organization engages in processing rather than slaughtering, the appellees and other packers still have an opportunity to sell that organization carcass meats, but the chain itself performs the most profitable part of the packing operations. (R. 469; 622). That the processing is the most profitable, slaughtering the least profitable, part of the packers' business was shown by the testimony of a number of witnesses. No contradiction was attempted. Illustrative is the clear testimony of F. Edson White, of Armour and Company:

> "Processing is really the productive end of our business so far as profit is concerned. We get our profit through the processing of our products. And to the extent that our customers take over the processing, we miss that profit, and we find, in this growing development of this great merchandiser called the chain store, that he is taking over, to a greater or lesser extent, these functions which have been a part

of our business, and produced the greater portion of our profits. The chain store today will buy meat in pickle, or may buy it green and pickle it themselves. If it is bought in one way or the other, it is shipped to their warehouse, and they do the processing. They smoke the hams and boil the hams. In some instances they even have gone so far as to manufacture sausage. Those are functions that properly belong to the packing business. At least, that is what the packing business has been built up upon, and when we find that sort of a development, we are denied a very large part of our profits in the handling of our business." (R. 622. Also see R. 528, 656, 682)

Other factors than the growth of chain store meat business have operated to cause a reduction of the defendants' branch house volume. The enormous increase in hard roads and motor truck transportation (R. 418) has caused single unit meat dealers located in small cities to motor to nearby large cities for their purchases of meats. The development of motor truck transportation has also caused meat jobbers in large cities to extend their trading area. This has resulted in a decrease of branch house volume especially in branch houses located in small cities which are near large cities (R. 655). Marlboro, Mass., located 25 miles from Boston, is an illustration of this development. Armour and Company operated a branch house at Marlboro for many years and acquired an additional branch house at that point as a result of the Morris purchase of 1923. Under modern transportation conditions the retail meat dealer located in Marlboro can motor to Boston for his supplies and the jobber located in Boston can serve the Marlboro district by truck delivery. As a result of this change in conditions, together with the growth of chain stores in Marlboro, Armour and Company was compelled to close both of its Marlboro branch houses and does not operate any branch house in that city at the present time (R. 655).

The injury to appellees' branch house system has been

observed by its competitors. Frank A. Hunter, President of Eastside Packing Company at East St. Louis (R. 425) testified:

> "I think the trend of trade advantage is rather against the large packer as compared with the small one because of the development of chain store buying in carload lots. * * * We think that the branch house system of doing business is not so good any more under the present trend." (R. 427-8.)

Frederick S. Snyder, who has had 43 years experience in the packing and food industry, testified at length regarding the effect of changed conditions on the appellees' branch house system. He said in part:

> "Referring to the advantages of the small packer over the large packer, the small packer, having a business in a locality where his chief market is within, say, 100 miles of that locality, is giving concentrated attention to his business in that section. In the presence of a surplus of stock which he feels he must move at any time, he utilizes the services of brokers all over this country and abroad, if he has a product that is made for foreign use, or of such character that it can be used both abroad and here, and disposes of it without the burden of carrying the branch house system which the leading packers must necessarily have. The carrying of that distributive outlet throughout the United States is a very serious burden and is becoming a more serious burden as time goes on, to the leading packers. (R. 458-9) * * *
>
> "The rapid changes in the methods of distribution at retail, are changing very rapidly the use of the branch house system which the packers have developed. I have seen the development of that branch house system and have been witnessing its decline in recent years. The leading chain stores are purchasing in carload lots direct either from the principal packers or from the intermediate packers, shipping to their own warehouses, cutting in their own warehouses for the particular requirements of their

own retail stores, distributing the product with their own trucks, including not only their fresh meats, but groceries, so spreading the overhead of delivery, and side-passing any use of the packers' branch house for that purpose. Of course, the retail merchants have been diminishing in numbers steadily since the development of the chain store form of merchandising and will continue to do so, very probably, for some years to come, with a corresponding increase in the development of the chain store system, which is more efficient, of course, than the system which it is, in part, replacing. * * * (R. 459.)

"I think we are only on the threshold of chain store development. If it continues as in the past four years, as I should suppose, it will continue to diminish the amount of merchandise going through packer branch houses, and, further reducing the spread of their overhead, and decrease the relative importance of the senior four packers as compared with the intermediate packers, because the intermediate packer can ship carloads of meat to chain store smokehouses just as well as Armour and Swift can, and it will mean a constant movement toward retrenchment on the part of the packers to protect their capital. They must find new methods to deal with the situation or change their whole method, because they cannot go on unendingly with the rising tide of business diverted from them and not make changes to meet that situation. (R. 474) * * *

Mr. Snyder is president of Batchelder, Snyder, Dorr, and Doe Company of Boston, which is engaged in the business of selling perishable food products in both meat and other lines (R. 457), and if the appellees are permitted to compete in the general food industry, his company will have increased competition to contend with. Mr. Snyder said on this subject:

"Mind you, when I take this position in which I feel that the present situation is improper, in view of the very radically changed conditions, both with respect to impending developments and those which be-

gan four years ago, but are continuing to expand, I am saying that against my own personal interest. But I think in the long run, we suffer from the lack of a fair field and no favor principle. I think we all will get on further and be further 25 years from now if in the interim we work on the principle of a fair field and no favor rather than have part of our organizations in this country shackled. I think it is inevitable that these new conditions of distribution will entail a multiplicity of new problems which will affect the defendants very markedly. They should be free to deal with them." (R. 472)

The Government contends, however, (Brief, pp. 46-7) that there has been no reduction in the proportion of the appellees' branch house business as compared with their total business in edible products. Counsel ignore, however, the all-important question of profits. Branch house volume has been substantially maintained by the appellees but only at the expense of a substantially increased cost of doing business. The appellees having lost a large volume of business normally done in their branch houses have naturally and of necessity endeavored to obtain new customers to replace lost volume and this has been accomplished largely by the solicitation of small orders formerly ignored by them. In 1920, Armour and Company's branch house volume was 3,000,000,000 lbs. for which there were 19,400,000 sales tickets. In 1929 the company's branch house volume was 2,800,000,000 lbs. and 21,900,000 sales tickets were required to handle this reduced volume (R. 656). The size of Armour's branch house orders has decreased from 156 lbs. per sales ticket in 1920 to 126 lbs. per sales ticket in 1929. This has resulted in an increased selling cost per order.

There are certain substantial branch house expenses such as rent, taxes, insurance, management and bookkeeping that are fixed and are not reduced because of a loss of volume (R. 655). It costs as much for a branch house salesman to obtain a 126 pound order as it would cost to

obtain a 156 pound order. Bookkeeping expenses and management expenses are the same for small orders as for large orders and delivery expense is not appreciably less. (R. 656)

Swift & Company's sales in branch house and packing house markets show a decrease in the size of orders ranging from 117 pounds per sales ticket in 1923 to 93 pounds per sales ticket in 1930 and this has resulted in an increase in the expense of doing business from $.845 per cwt. in 1923 to $.991 per cwt. in 1930 (R. 958a).

The results in dollars and cents as to Swift & Company are shown by the operations of 19 branch houses located in the territory adjacent to New York City. During the 8-year period from 1920 to 1927, 15 of these branch houses were operated at a profit and the remaining 4 sustained losses aggregating $5,549. During the two years, 1926 and 1927, 14 were operated at a profit and 5 branch houses sustained losses aggregating $16,425.01. During the years 1928 and 1929, only 6 branch houses were profitable and 13 sustained losses aggregating $123,001.20 (R. 960).

The increasing sale of meats by chain stores has also adversely affected the appellees' car route distributing system. In 1920 practically all sales in appellees' car route territories were made to single unit retail meat dealers and the chain store meat business was insignificant. At the present time there are located in Swift's car route towns 7,000 chain stores of which 1900 are handling fresh meats. Nearly all of the 7,000 stores handle smoked meats, butter, eggs, cheese, oleomargarine and refinery products. This chain store development in the retail meat business in car route towns has occurred principally during the last three years (R. 666). With it has come the usual centralized buying direct from packing plants and many single unit stores which formerly were served by appellees' car routes, have been replaced by chain stores (R. 667).

The development of hard roads and motor truck transportation have also affected the appellees' car route business. Prior to this development, competition in the average car route territory was limited to local slaughterers and packers in the immediate vicinity, local packers' branch houses and other packers who shipped by car route. The building of hard roads has caused many small packers to increase the scope of their activities. The hard roads enable them to make rapid deliveries in territories which formerly were not accessible to them (R. 670).

The obligation of appellees to guarantee railroad companies a minimum revenue or tonnage per car, which is hereinafter discussed, requires an even flow of volume in car route territories in order to avoid penalties. Regular schedules must be maintained for car routes because customers naturally insist upon knowing when they can obtain their requirements. When a salesman calls on a dealer, the dealer wants to know definitely when the car will arrive. Therefore route cars must be sent out on schedule regardless of whether they do or do not produce the required minimum of tonnage or revenue (R. 666).

As a result of the development of chain store meat business in car route territories, the appellees in an endeavor to maintain service and volume have been compelled to solicit the business of smaller dealers who were not formerly canvassed (R. 669). This has resulted in an increased number of small orders. Swift's average weight per car route order has decreased from 206 pounds in 1923 to 165 pounds in 1929 (R. 958a). This reduction in the size of orders has resulted in an increase in the expense of doing business from $.90 per hundred weight in 1923 to $.95 per hundred weight in 1929 (R. 958a).

In 1925 Swift & Company sold to 65,000 customers in car route territories and in 1929 on account of the increase in small orders, there were 83,000 customers. Before 1925 an order for less than 100 pounds in car route territories

was unusual and it was against the policy of Swift & Company to accept such orders (R. 669). The loss of volume resulting from chain store meat sales forced a change in this policy and in 1929, 35 per cent of Swift's car route orders were for less than 100 pounds each. This has resulted in increased delivery expense, increased credit losses and further freight penalties because of railroad requirements of the payment of a minimum freight charge on 100 pounds per order (R. 669-70).

In 1925 Swift & Company shipped 8,146 route cars out of its East St. Louis plant and the volume of business done was 106,948,000 pounds (R. 667-8). In 1926 a number of chain store warehouses were established in the car route territories and the service was reduced to 7,000 route cars with a total of 93,000,000 pounds. In 1927 there was a further reduction to 6,700 cars and in 1928 to 6,400 cars and in that year the tonnage amounted to 75,000,000 pounds (R. 668). In 1928 Swift & Company paid to railroads $57,000 in freight penalties because it was unable to load its East St. Louis cars to the prescribed minimum weight. A radical readjustment was required and in 1929 the number of cars shipped was reduced to 4,341 (R. 668).

The Government does not deny that modification of the decree will enable appellees to effect economies in the operation of their branch houses and car routes, but contends that the very fact that savings can be thus accomplished, is a reason why the decree should not be modified (Brief, pp. 45-6). The petition of 1920 alleged that the defendants' distributive facilities, intended primarily for the sale of meats, were employed with comparatively no increase of overhead in the distribution of substitute foods (R. 17). The Government, therefore, contends that the situation today is no different than it was in 1920 and that a so-called competitive advantage which then existed, still exists and that, therefore, the decree should not be modified. There are two answers to this argument.

The first answer is found in the fallacy of assuming

that the changes in fact which are required to justify modification of an injunctive decree, must be found in the action prohibited instead of in the basis upon which the prohibition was issued. The theory of the 1920 petition was monopoly and fear of monopoly and nothing less than that could have justified the Government in requesting that a court prohibit five corporations from competing in an essential industry. Concededly, there is now no monopoly in the packing industry and clearly this record shows there is no possibility that such a monopoly or a monopoly in the food industry can now be acquired by the defendants or by anyone. The basis for the injunction against the handling of foods other than meat no longer exists, and that being true, modification of the decree cannot be denied upon the ground that the prohibition which had the effect of depriving the appellees of a means of economical operation in 1920, has a similar effect at the present time. This method of economical operation was not prohibited because it was economical, but because of an alleged monopoly and fear of monopoly.

The second answer to the Government's argument is that any transportation advantage which the appellees may have had in 1920, has disappeared as a result of changed conditions. This fact is overwhelmingly established by the proof, and is discussed in the next division of this brief.

Appellees should not be compelled to continue to incur losses in the sale of meats merely because of a desire that the price of groceries may not be reduced by increased competition. The destruction of economy of operation by the appellees is no longer justified.

The record contains a vast amount of testimony regarding the buying power of a quantity purchaser. Because of the advent of the chain store in the retail meat business this buying power is now exercised against the packing industry. (R. 423, 470, 650, 622)

Oscar G. Mayer, President of Oscar G. Mayer & Com-

pany, testified that when his company sells to a chain organization, it is compelled to sell on a lower basis than to other customers, and that it is a general practice among packers to give the quantity buyer a lower price (R. 422). He further testified:

> "As to buying power, I think the buyer is practically always in a stronger position than the seller, because of the large reserve supply of meat in the United States. The industry carries at the peak of its accumulation period, say late in April, as much as 750,000,000 pounds of meats in storage in coolers. The packers are always put to it to dispose of this supply. (R. 423) * * *
>
> "A person who has a buying power of 5 per cent of the available supply of meat is in a very advantageous position. A man who has an available buying power has a definite advantage in the meat trade on account of the huge reserves and the willingness of the packing industry to sell its products at all times." (R. 424)

There is no doubt that both Swift and Armour are subject to the necessity of selling on a lower basis to chain organizations. Sales of meats to a single chain organization by Swift & Company amounted to $18,913,632 in 1928, and $22,183,744 in 1929. Its total sales to all chains were $71,550,000 in 1930, and in 1930 Swift & Company's sales to its largest chain customer aggregated $21,104,350 (R. 622, 650, 641).

Armour and Company's sales to chain customers amounted to $63,400,000 in 1928, $73,700,000 in 1929 and $85,400,000 in 1930, and its 1930 sales to its largest single customer amounted to $25,027,836, or 29.3 per cent of its total chain store business (R. 939).

There are various concerns engaged in the food industry that sell to single customers large percentages of their total output (R. 719). They also may be compelled to grant quantity discounts to these large purchasers, but

the granting of a quantity discount by General Foods Corporation, which earns 15.17 per cent on sales (R. 858) is a radically different thing from the granting of a quantity discount by Swift & Company earning 1.26 per cent on sales, or by Armour and Company earning .98 per cent on sales (R. 888a). There is nothing to indicate that these general food concerns are gratified because modern conditions have produced customers of such magnitude that they are in the position to exact a quantity discount. Furthermore, the appellees are burdened with a costly branch house system and during recent years have witnessed a substantial increase in branch house expense and at the same time are confronted with this quantity buying which exacts a discount below the usual price level. The appellees, however, are not requesting the elimination of the quantity discount exacted by chain store buyers but are only asking for permission to do that which their competitors are doing.

Many intermediate and small packers whose problems are not nearly as acute as that of the appellees have followed the modern trend by engaging in the business of selling general food products. There appears in the record a list of 140 meat packing concerns that are now selling articles which the defendants are prohibited from handling (R. 909-920). Counsel for the National Association claim (Br. p. 42) that if the appellees are permitted to do likewise "the future of the independent meat packer is precarious," but numerous competitors of appellees testified in support of modification of the decree and the appellants did not produce any meat packer witness to prove that the appellees' competitors share the apprehension entertained by the National Grocers Association for them.

The modification of the consent decree granted by the trial court will in a large measure remedy the existing difficulties with respect to branch houses and car routes. The handling of grocery items in branch houses will re-

sult in increased sales volume and a reduction in sales expense. Fixed charges will not be increased. Delivery equipment will be used to greater capacity and delivery costs will not be increased proportionately. Existing salesmen will be utilized to solicit business for a diversified line instead of for meats alone and the present overhead of branch houses and car routes now charged against meats alone will be distributed over a variey of products (R. 657). In the case of car route business similar savings will be effected and increased volume will enable the defendants to render better and more uniform service and to reduce the payment of freight penalties (R. 671).

Frederick S. Snyder testified on the subject of the solution of the appellees' difficulties:

> "The only salvation for the big packer is to fill up his obsolete branch house facilities to capacity by handling other lines and having freedom to move the same as the next hundred packers do." (R. 474.)

T. Henry Foster, President of John Morrell & Company (R. 548), Dr. Paul H. Nystrom, Professor of Marketing at Columbia University (R. 694-5) and Harold H. Maynard, Professor of Marketing at Ohio State University (R. 704) also testified to the advantage and necessity of diversification by the appellees.

The parties stipulated and agreed that 83 livestock producers and officers of producers' associations would testify if called that in their opinion the livestock industry would be benefited if the large meat packing companies were permitted to sell food stuffs other than meats so that the cost of distributing meats might be shared by other foods (R. 560-64).

VI. Under Present Conditions the Use of Appellees' Refrigerator Cars to Transport Commodities Other than Meats Will Not Give Them Any Unfair Advantage Over Their Competitors.

A. THE PRESENT SUPPLY OF REFRIGERATOR CARS.

The petition of 1920 charged that the defendant packers operated 90 per cent of the total route cars used in the packing industry (R. 13) and implied that the supply of refrigerator cars was not adequate. A large number of Appellees' competitors testified that they now have no difficulty whatever in obtaining all the refrigerator cars they need for the operation of their business.* After this proof had been made the parties agreed to a stipulation,

> "* * * that the supply of refrigerator cars in the United States, whether owned by the defendants or other meat packers, private car companies, or common carriers is adequate to afford an ample supply of refrigerator cars at any time to any who need them and are in a position to use them." (R. 508)

The number of refrigerator cars owned by Armour and Company (including Morris & Company) has decreased from 7,908 in 1920 to 6,766 in 1929 (R. 944). Swift & Company had 7,113 refrigerator cars in 1920 and 5,509 in 1929 (R. 956).

The Government's brief (p. 69) states that Swift operates over 5509 route cars and Armour over 6766. If it was the intention to give the impression that the companies operated that number of car routes the statement is erroneous. The figures are for the number of refrigerator cars owned by the respective companies. Armour and

*Oscar G. Mayer (R. 421), Frank A. Hunter (R. 426), Andrew P. Miller (R. 430), David G. Madden (R. 433), George L. Heil (R. 437), Harry A. Schanz (R. 440), Thomas W. Talliaferro (R. 444), Henry Neuhoff (R. 452), Joseph P. Murphy (R. 454), Paul W. Trier (R. 457), John W. Rath (R. 549), William E. Price (R. 550), T. Henry Foster (R. 545). The company represented by the last witness owns 400 and leases 200 refrigerator cars (R. 545).

Company operates 317 car routes (R. 944) and Swift & Company 1014 (R. 956).

B. ROUTE CAR SERVICE.

The Appellants contend, however, that if the Appellees are permitted to engage in the business of selling groceries they will have an unfair advantage over the interveners in that the Appellees, through the operation of route or peddler cars, will obtain expedited service and procure quicker and more certain deliveries of groceries than the concerns engaged in the wholesale grocery business. The record does not substantiate the claim that the railroad transportation service available to the Appellees is any more expeditious than that procurable by any other shipper (R. 675). In fact the evidence is directly to the contrary and shows that refrigerator cars do not move any differently than non-refrigerator cars in so far as rapidity or frequency of movement is concerned. The route cars operated by the Appellees are placed in local freight trains (R. 665) and moved on regular schedules without preferential treatment over any other type of car (R. 675).

The Government claims (brief page 50) that the Interstate Commerce Commission has found that shipments in refrigerator cars are handled more expeditiously than those in the ordinary merchandise cars. *National Wholesale Grocers Association v. Director General,* 62 I. C. C. 375, *decided June 22, 1921,* is relied upon. That decision involves the legality of the action of carriers in permitting meat packers to load groceries in peddler cars and the Commission said in part:

> "Certain of the packers' peddler cars as above indicated move several hundred miles upon a weekly schedule. The wholesale grocer on the other hand ships to points within a radius of only 100 miles in a daily merchandise car. If the time occupied in movement from the point of production or distribu-

tion to the point of consumption is controlling, it would seem that as to the greater part of his business the grocer has an advantage. (P. 385 of 62, I. C. C.)

"On the other hand a merchandise car routed straight through to one destination would often be in transit less time than a peddler car in reaching the same destination, but peddling en route. (P. 387 of 62, I. C. C.)

"It seems clear that the merchandise car and the packers' peddler car or branch house car move in the same trains and that the principal delay occasioned to the shipment of the wholesale grocers is due to the manner of handling their shipments through the carriers' freight houses. They now have available the station order car which is similar to the packers' peddler cars. If this car were availed of in the same manner and to the same extent as the packers' peddler car it is not seen in what way complainants would be prejudiced." (P. 402 of 62 I. C. C.)

C. THE CONSTRUCTION OF HARD ROADS AND THE GROWTH OF MOTOR TRUCK TRANSPORTATION.

Whatever the situation may have been in 1920, it is clear that any possible advantage to the shipper in route cars has been entirely eliminated since then by the construction of hard roads and the development of motor truck transportation. Surfaced roads in the United States have increased from 387,457 miles in 1921 to 662,435 miles in 1929 (R. 418). Roads surfaced with concrete, asphalt, macadem and similar materials have increased from 36,038 miles in 1921 to 112,454 miles in 1929 (R. 418). The effect of this increase in hard roads subsequent to the entry of the decree has been to increase the number of motor trucks in use in the United States from 979,904 in 1921 to 3,379,854 in 1929 (R. 418).

The business of the wholesale grocer is particularly adapted to the use of the motor truck in making deliveries. Wholesale grocers, with the exception of a comparatively few nation-wide institutions, do business within

a small area. The 5,919 wholesale grocers doing business in the United States are located in 2,349 different cities (Petitioner's Exhibit 88, not printed, R. 1172-3). This congestion of wholesale grocers indicates the necessarily narrow limit of their selling field and that most of their customers can be reached by motor truck. Petitioner's Exhibits 83 and 84 (not printed, R. 1173) show the large extent to which wholesale grocers are now utilizing the motor truck as a means of transportation. The use of trucks enables them to expedite their deliveries to any extent they desire.

The Government attempts to answer this point by stating (brief, pp. 49-50) that transportation by auto truck is advantageous only for distances up to 125 miles while route cars *often* travel as much as 600 miles. The record does not justify the statement that route cars *often* move that distance. It shows only that 600 miles is the limit of practical operation (R. 666). However, even if it were correct it would not answer the point we are making because the radius of the wholesale grocers' area of distribution is about 125 miles and not 600 miles (62 I. C. C. 375, 380, 385). As they have truck service within their radius of distribution they cannot possibly be hurt by the operation of peddler cars.

The increase in motor truck transportation has been so extensive and rapid within the past few years that it has become a menace to the railroads. The subject was considered by the Interstate Commerce Commission in the *Fifteen Per Cent Case*, 178 I. C. C. 539, decided October 16, 1931, and the Commission said at page 574:

> "Movement by truck is a new form of competition which has been developing with great rapidity. It has been principally effective on less-than-carload traffic and relatively short hauls of such commodities as livestock, cotton, cement, sand and gravel, gasoline, fruits and vegetables and general merchandise; but it is continually extending to more and more traffic

and for longer distances, as trucks and trailers are enlarged and highways improved. At present it is aided by prevailing low prices for gasoline and rubber and the over-supply of labor. In addition to rates, advantages which it offers to the shipper are in rapid and flexible service, store-door receipt and delivery, the transportation at carload rates of much smaller lots than are possible by railroad and elimination of costly railroad packing requirements. The carriers introduced evidence to show that it would be feasible for the trucks to divert only a comparatively small amount of additional tonnage even if rates were increased. But without exaggerating the menace of this form of competition we are convinced that the carriers have underrated it and that its possibilities are materially greater than they are prepared to concede."

At page 34 of the American Association brief counsel admit the change in conditions since 1920 with respect to transportation,

> "It may be true that the petitioners do not have to the same extent advantages over wholesale grocers and others who distribute by truck as they had when they and their competitors all used railroad transportation."

Counsel then proceed to complain of the use of trucks by Appellees to supplement their car routes, but the fact remains that the transportation advantage claimed to have existed in 1920, has been removed by the increased use of the motor truck and the increase in the number of refrigerator cars available to all. The trial court made the following finding of fact on this subject:

> "17. That during the past ten years, (a) the increase in the number of railroad refrigerator cars, not owned by the defendants, available to all who need to use such equipment in their businesses, has resulted in there now being ample equipment of that charac-

ter for any and all who need them; (b) the increase in the use of motor trucks for the transportation of food products and the extending of the areas of their operation by reason of the great increase in good roads, and the increase in the transporting by motor trucks of products by packers competing with defendants and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants of any advantage which the ownership of refrigerator cars formerly gave them, and none of the defendants enjoys any undue preference or advantage by reason of its ownership of refrigerator cars." (R. 1113)

The evidence in the case fully supports this finding.

D. MINIMUM CHARGES ON ROUTE CAR SHIPMENTS.

The Appellants contend that if the Appellees are permitted to handle groceries they will derive an advantage over wholesaling grocers in that the Appellees will be enabled to eliminate penalties now imposed where meat shipments in peddler cars are less than the required minimum. It is difficult to appreciate any justification for a claim that the removal of an existing handicap will give the Appellees an advantage over concerns not now subjected to a similar handicap. The Appellees have proved that they are being subjected to the imposition of freight penalties and they have shown that if permitted to handle general foods it will be possible to reduce such penalties. To the extent they are successful the result will be to place the Appellees upon a basis of equality with the wholesale grocers as it is not contended that they are now being subjected to the imposition of penalties.

Petitioner's Exhibit 173 (not printed, R. 1173) consists of the tariffs of various railroads throughout the country containing the route or peddler car rules in effect in the different freight classification territories which cover the United States, namely, Central Freight Association, Eastern Trunk Line, New England, Southern, Southwest-

ern, Western Trunk Line, and Trans-Continental and Inter-Mountain territories. The rules in these various territories differ but they are all designed to accomplish the same purpose, namely, to assure the carrier that on each peddler car shipped it will receive a certain minimum revenue. Grocery articles may be used in making up this minimum in the Central Freight Association, Southern, and Southwestern territories, but may not be used in making up the minimum requirements in the Eastern Trunk Line, New England, Western Trunk Line, or Trans-Continental and Inter-Mountain territories (Petitioner's Exhibit 173 not printed). Therefore the contention that the avoidance of a penalty constitutes an improper advantage can have no possible application except in the three territories first named. Nor can it have any application in those territories to peddler cars containing enough fresh meat and packing house products to make up the required minimum.

The rules of all territories provide that the shipper of the peddler car shall bear the expense of ice and reicing the car and of billing, loading and cleaning. None of this expense is borne by a shipper who delivers his perishable products to the carrier's freight station for shipment in one of the regular scheduled refrigerator cars of the carrier. This is referred to in the opinion of the Interstate Commerce Commission in *National Wholesale Grocers Association v. Director General*, 62 I. C. C. 375, at page 384:

> "The packers assume the cost of loading at point of origin, the cost of reicing, the sum necessary to meet the minimum charge and the expense due to ownership of the car. These four items of expense aggregating from 33 to 36 cents per hundred pounds in addition to the freight rates, are not paid by the grocers upon shipments of less-than-carload traffic."

J. A. Revelle, Assistant Manager of Swift & Company's Car Route Sales Department (R. 665), testified to the

decrease of business in car route territories because of the growth of chain meat stores and the enlarged area of the activities of small packers brought about by the development of good roads. The witness testified that this lack of tonnage resulted in the payment of penalties on numerous peddler cars which might be avoided if the company were permitted to handle grocery articles (R. 671, 673). A part of his testimony upon an assumed state of facts is quoted at page 32 of the brief of the American Association

> "For instance if we assume that the minimum is 10,000 pounds and the rate is $1 a hundred, 8,000 pounds at that rate would come to $80 but we would still have to pay $100 to move it in that car. We could then without paying any more money, put enough groceries or any other specific products up to 2,000 pounds in that car to raise the rate up to $100 without paying out any more total revenue on the car."

Counsel did not quote the explanation made immediately thereafter by the witness:

> "I think we must make a distinction. I do not want to get this confused in your mind at all. This does not relieve us of any freight charge at all,—it relieves us of a penalty." (R. 674.)

The inference drawn from the assumed case put to Mr. Revelle ignores the fact that on a shipment of 8,000 pounds at $1 per hundred pounds with a minimum requirement of 10,000 pounds, the rate on the 8,000 pounds because of the penalty of $20, becomes $1.25 per hundred pounds. If this situation should occur in a territory where grocery articles may be used in making up the minimum requirements, the inclusion of 2,000 pounds of groceries in the car at a rate of $1.00 per 100 pounds would simply bring the rate back to the normal $1 per hundred pounds. The less than carload rates are paid upon the groceries

as well as the other articles in the car, and if 5,000 pounds of groceries had been added to the car instead of 2,000 pounds, the total paid upon the groceries would have been $50 or a total of $130 for the car, which is $30 in excess of the minimum of $100 per car. The shipper of a peddler car with only 8,000 pounds of freight, containing, for instance, some canned meats, is at a distinct disadvantage from a rate standpoint as compared to a wholesale grocer shipping the same quantity of canned meats through the carrier's freight station to the same destination. The shipper of the peddler car would pay $1.25 per hundred pounds on the canned meats, while the wholesale grocer would pay only $1 per hundred pounds. The right of the shipper of the peddler car to include enough other products in the car to avoid the payment of the penalty charge simply places him on an even basis from a rate standpoint with the wholesale grocer shipping the canned meats through the carrier's freight station.

The Government in its brief (page 66) refers to the testimony of one wholesale grocer to the effect that he could not compete with Armour and Morris in the sale of canned milk because they ship milk in refrigerator cars which are underloaded and "the meat carries the load" so that they can undersell him by the amount of his transportation charge (R. 787). The witness referred to was J. T. Griffin, President of the Griffin Grocery Company, Muskogee, Oklahoma, and the Griffin Goodner Grocery Company of Tulsa, Oklahoma. The two companies together operate 13 branch houses and do a combined business of $7,500,000 per year. The Griffin Company manufactures peanut butter, preserves, jellies and candies and roasts coffee. The manufacturing business amounts to $600,000 to $700,000 per year. About 95 per cent of their groceries are delivered to retailers by trucks. The truck deliveries have come on gradually with better roads during the last ten years (R. 787).

In referring to the shipment of milk in refrigerator

cars the witness said, "They (referring to Armour and Morris) ship it together with their meat, and they have a minimum, say, of 10,000 pounds. If they have only 7,000 pounds of meat, they can throw in the milk, I understand, and it costs them no freight on the milk. That is the meat carries the load." (R. 787) It is hard to believe that the Government seriously contends that the appellees pay no freight charges on shipments of milk, groceries or any other articles in peddler cars, yet their reliance upon loose testimony of this kind leads to that conclusion. Milk shipped in peddler cars pays the less than carload rate the same as if shipped through the carrier's freight station. All products in the car carry the load, *i. e.*, the freight charges, and not merely meat.

A number of witnesses for the Government were asked questions which assumed that the shipper of a peddler car avoided the payment of freight charges on grocery articles loaded into a peddler car containing not enough weight to make up the minimum charge (R. 782, 787, 790). Upon this assumption these witnesses said that such a situation would be detrimental to their business. The assumption contained in the questions, namely, that the payment of freight would be avoided, is clearly fantastic and the conclusions of the witnesses are erroneous.

The argument of Appellants is not sound as applied to peddler cars because all shipments in such cars pay the less-than-carload rates. There is nothing unusual in shipping different articles in the same car where any minimum tonnage or revenue is required and the shipper is permitted under the railroad's mixing rules to load a variety of articles in the car to make up the minimum. It results from the system of rate-making in the United States providing for less-than-carload and carload rates, minimum weights, minimum charges and mixing rules. The argument of Appellants, if carried to a logical conclusion, would require the abolition of all less-than-carload and carload rates, all minimum weights and charges and

mixing rules and in lieu thereof the establishment of a system of any quantity rates without restrictions. In this way every shipper could be placed upon a basis of absolute equality but the Interstate Commerce Commission does not approve any quantity rates because they encourage uneconomical operation (*Southern Class Rate Investigation,* 100 I. C. C. 513, 642). Furthermore, the law does not attempt to equalize fortune, opportunities or abilities (*Interstate Commerce Commission v. Diffenbaugh,* 222 U. S. 42, *Ellis v. Interstate Commerce Commission,* 237 U. S. 434, *United States v. Illinois Central Railroad,* 263 U. S. 515).

The wholesale grocers, who are objecting to the packers shipping groceries in their peddler cars, now have the privilege, under the railroads' mixing rules, of shipping a wide variety of articles in mixed carloads, and in this way securing carload rates upon small quantities of the various articles. Rule 10 of the Official Classification permits all articles rated fifth class to be shipped in mixed carloads at the fifth class carload rate. *Consolidated Classification Case,* 54 I. C. C. 1, 16. The following is a partial list of articles rated fifth class:

Canned Peas	Canned Pork & Beans	Rivets
Canned Beans	Canned Sauer Kraut	Linseed Oil
Canned Fruit	Condensed Milk	Corn Syrup
Canned Meats	Soap	Pickles
Canned Rice	Table Sauces	Borax
Canned Hominy	Sandwich Spreads	Paints
		Bleaching Powder
		Nails

That the above articles are rated fifth class in official classification territory appears from the following decisions of the Interstate Commerce Commission:

Central Leather Co. vs. A. C. & Y. Ry. Co., 159 I. C. C. 56, 60.

In Re Matter of Suspension of Western Classification, 51, 25 I. C. C. 442, 532.

Sar-A-Lee Co. vs. A. C. & Y. Ry. Co., 120 I. C. C. 513.
Rate Structure & Investigation, Part 6, Iron and Steel Articles, 155 I. C. C. 517, 532, 592-3.

It will thus be seen that wholesale grocers handling these articles may ship a keg of nails, a box of soap, a barrel of linseed oil, a can of paint, and a case of canned fruits in a mixed carload of the above articles and in this way secure the fifth class carload rate upon these small shipments, while dealers handling only those respective lines, shipping the same quantities, would have to pay the less than carload rates. This is a real advantage to wholesale grocers because in this way they secure carload rates on less than carload quantities, while that situation does not obtain with respect to shipments in peddler cars because the less than carload rates are paid upon everything contained in the car. They would lose this advantage if the principle for which they are here contending should be made applicable to their shipments.

From an economic and car conservation standpoint, the argument of Appellants is obviously unsound. Car conservation and heavier loading is the goal constantly sought by the railroads for the purpose of promoting efficiency and economical handling. The lower court realizing this situation, said in its opinion:

> "As to the peddler cars it is an extreme measure unless absolutely necessary, to prevent any one from making an economic use of his facilities. The use by the packers of vacant places in the peddler cars and in their warehouses not used for meats, by other commodities, is sound as an economic and business proposition." (R. 1057-8.)

E. DECISIONS OF THE INTERSTATE COMMERCE COMMISSION.

The decree of 1920 prohibited the defendants from handling the articles enumerated in Paragraphs 4 and 5 of the decree, but did not prohibit competitors of the de-

fendants from handling those articles. There are at least 140 meat packers in the United States who deal in articles which the defendants can not handle because of the 1920 decree. (R. 909-920)

Proceedings were instituted before the Interstate Commerce Commission by both of the interveners, and in the case of *National Wholesale Grocers Association vs. Director General, Alabama & Vicksburg Railway Company, et al.*, and *Southern Wholesale Grocers Association vs. Southern Railway Company, Director General as Agent, et al.*, 62 I. C. C. 375, the Interstate Commerce Commission passed upon the question now sought to be argued for the second time before a different tribunal. Petitions in intervention were filed in said proceedings by numerous wholesale grocery associations, by the appellees herein, and by seven other meat packers: John Morrell & Company, T. M. Sinclair & Company, Jacob E. Decker & Sons, Rath Packing Company, Iowa Packing Company, George A. Hormel & Company, and Kingan & Company. The interveners in this case contended in that case that the packers, meaning not only the appellees but all packers, should not be permitted to ship grocery articles in their peddler cars. In its decision rendered on June 22, 1921, the Commission held, p. 403,

> "Upon consideration of all the facts of record we find (1) that the practices of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars is not shown to result in undue prejudice to complainants or unduly to prefer the packers."

The American Association contends (Brief pp. 30, 31) that this decision of the Interstate Commerce Commission was influenced or brought about by the consent decree. Whether this is so or not, can be determined by an examination of the Commission's opinion. The opinion covers 30 pages. A little more than one page is devoted

to a discussion of the consent decree. The rest of the opinion is devoted to a discussion of the facts bearing upon the issues from a transportation standpoint under the Interstate Commerce Act, and the decision is based upon those facts and the law, and not upon the consent decree. This clearly appears from the first sentence of the Commission's conclusions, found on page 401:

> "Whether within the meaning of the interstate commerce act the transportation of the unrelated items in the packers' peddler cars unduly prefers the packers and unduly prejudices the complainants, who load or unload their freight from cars on private sidings at their own expense or through the freight houses of the carriers, must depend upon the usual test in cases involving discrimination, namely, whether the conditions of transportation are substantially similar in the two cases."

It is true that the defendant packers endeavored to have the case disposed of without the entry of any order by the Commission, on the ground that the decree accomplished what the grocers were seeking in the case before the Commission. (R. 1012) The Southern Wholesale Grocers Association (now the American Association) filed a motion with the Commission that its complaint be placed upon the suspense docket pending the carrying out of the terms of the decree. The National Association did not concur in the motion and insisted upon going forward with the case, because (a) the consent decree did not cover all the articles it wished excluded from the cars, (b) other packers not bound by the consent decree were handling the grocery articles and announced their intention to continue to do so and to increase the lines they were handling, and (c) it feared the decree might be in some way evaded. (R. 1018, 1023.)

The Commission ignored the contention of the four defendant packers, denied the motion of the Southern Whole-

sale Grocers Association, and decided to proceed with the case in accordance with the request of the National Association. Having come to this conclusion, the Commission was legally bound to base its decision on the evidence relating to transportation conditions. The case affected other packers not bound by the consent decree, and it clearly would have been error for the Commission to have been influenced by, or to have based its decision upon the consent decree, which applied to only five packers.

It seems clearly apparent that the Commission gave no consideration to the Consent Decree in reaching its decision from the following quotation from its decision found on page 382:

> "The extent of the dealings of the packers in these other commodities is not for us to condemn or approve. We are to consider the connection of the packers with these commodities from a transportation standpoint."

Clause B of Paragraph 2 of the answers of the American Wholesale Grocers Association to the Swift and Armour petitions for modification (R. 323, 335) allege that as a result of the entry of the decree, the appellees herein were enabled to and did intervene in the case before the Interstate Commerce Commission reported in 62 I. C. C. 375. This allegation is erroneous because the orders permitting intervention were issued on September 3, 1919, as to Swift, and on September 5, 1919, as to Armour. (R. 680.) The decree in this case was not entered until February 27, 1920.

Peddler car rules have been before the Interstate Commerce Commission in a number of cases. The last decision of the Commission involving these rules was rendered on July 14, 1930, in the case of *Swift & Company, et al. vs. Akron, Canton & Youngstown Railway Company, et al.*, 167 I. C. C. 355. The rules involved in that case

were those in effect in Central Freight Association territory. Prior to this decision, the minimum charge was computed on the basis of 20,000 pounds at the fresh meat carload rate to the final destination of the car, and some carriers in this territory did not permit the revenue on grocery articles to be used in making up the minimum. The Commission reduced the minimum charge to 12,000 pounds at the third-class rate from point of origin to final destination, and further held that the rules were unreasonable to the extent that they excluded as a credit against the minimum charge per car the revenue on articles other than fresh meats and packing house products. The Commission's finding in this respect appears upon page 364 of the decision:

> "We further find that the rules governing the transportation of fresh meats, packing-house products, and other articles transported in peddler cars are and for the future will be unreasonable to the extent that they require or may require as minimum revenue per car an amount in excess of charges based on 12,000 pounds at the third-class rate from point of origin to final destination of the car, and to the further extent that the rules exclude or may exclude as a credit against the minimum charge per car the revenue on other articles shipped in the same car."

It thus appears that the Interstate Commerce Commission, which has jurisdiction of this subject, has held as late as July 14, 1930, that it is not only proper in Central Freight Association territory to load grocery articles in peddler cars and use the revenue on them to make up the minimum charge, but that rules which forbade this being done were unreasonable and should be changed.

VII. There is no Foundation in Fact for the Claims of Alleged Contumacious Conduct and Violation of Anti-Trust Laws by the Appellees.

Counsel contend that the appellees are not in a position to ask for relief in a court of equity because of alleged misconduct on their part, and that therefore the merits of this controversy should not be passed on.

A. THE CLAIM THAT THE APPELLEES HAVE VIOLATED THE DECREE.

The appellants contend that the appellees have violated the decree by failing to sell all of their stock in stockyard companies and by dealing in commodities prohibited by the decree.

Paragraph tenth of the decree of 1920 directed the defendants to submit to the court a plan for the disposition of their stockyard interests (R. 162-3). The plan was submitted and approved by a decree entered April 12, 1921 (R. 977). Pursuant to this plan, Henry W. Anderson and George Sutherland were appointed as trustees of the court. Irrevocable powers of attorney were executed and delivered to them by the defendants and all of their stock in stockyard companies was placed in the hands of a depositary (R. 977). The appellees endeavored to sell these stocks but were unable to do so and at the suggestion of the trustees, the stock was offered at public sale (R. 995) and was advertised for sale in 28 newspapers but no bids were received (R. 996). The trustees reported to the court on April 8, 1922:

> "* * * the Swift and Armour groups of defendants have made reasonable and sincere efforts to sell said stock and that up to the date of this report their efforts in this regard have been unsuccessful." (R. 997)

On March 21, 1923, Henry W. Anderson as sole trustee further reported to the court:

"Your trustee is advised that in the past year the owners of said stocks have kept up a constant inquiry as to any possible opening which might be presented for the sale of such stock at a reasonable price as provided in said plan, but as yet have been unable to receive any offer for said stocks or any substantial part thereof. During the recent visit of your trustee to said stockyards inquiry was made at every point of bankers, business men and others who might be informed on the subject, including shippers and producers selling on said yards, as to whether it would be practical at this time to sell the stocks of the Swift and Armour groups of defendants in the respective yards in the territory served thereby and the testimony was generally to the effect that such sale would not be practical." (R. 1009)

Because of the inability of appellees to sell their stockyard interests the trial court from time to time granted extensions of time for compliance with that portion of the decree directing a sale of stockyard interests. This continued until May 1, 1925, when the decree as a whole was suspended by order of the District Court. (R. 194). The operation of the decree was restored pursuant to the mandate of this court on July 24, 1929 (R. 195). Swift & Company then filed a petition alleging that notwithstanding diligent efforts, it had been unable to dispose of its interests in public stockyards and requesting an extension of one year within which to effect a sale (R. 196-7).

In the meantime Armour and Company had sold substantially all of its interests in public stockyards for a substantial cash payment and 35 per cent of the common stock of General Stockyards Corporation, the purchaser (R. 629). On July 24, 1929, Armour and Company filed a petition alleging that it had theretofore sold all its interests in stockyards with the exception of the Jersey City Stockyards Company and the Pittsburgh Union Stockyards Company, but that it had not been able to dispose of all of its unrelated lines or its interests in two plants

producing such products. An extension of one year was requested for the disposition of said interests (R. 198-9).

The hearing on these petitions for extensions of time was set for October 2, 1929, and thereafter was continued by the court from time to time until December 19, 1929 (R. 1154-6). In the meantime petitions to modify the decree on the ground of changed conditions had been filed by the appellees and on December 19, 1929, the hearing was postponed until after the petitions to modify had been heard and the time for compliance with this part of the decree was extended until said hearing had been held on the petitions to modify (R. 1157 and 196).

The record, therefore does not support the claim that there has been any disobedience to the decree as to either stockyards or unrelated lines. Counsel for the National Association maintain the contrary and state at page 22 of their brief:

> "That the petitioning packers have never in good faith performed or endeavored to perform the promises they made when they signed the consent decree is established beyond question. As late as February 5, 1930, the Attorney-General, in a communication to Senator McNary concerning the status of that decree, said:
>
> > 'The provisions of the decree, especially with reference to packer ownership of stockyards stock and the handling of unrelated commodities *have never been fully complied with.*' (Italics ours)"

The Attorney General's letter (Congressional Record of Feb. 12, 1930; Vol. 72, Part 4, p. 3495), to Senator McNary is not in the record. Inasmuch as counsel have seen fit to go beyond the record to support their charge, we feel that we are justified in presenting additional information from the same source and we take the liberty of quoting that part of the letter of the Attorney General to Senator McNary, which follows immediately after the single sentence selected by counsel:

"Extensions of time within which to complete such compliance were granted by the court from time to time until May 1, 1925, on which date the operation of the decree was entirely suspended by court order, pending the determination of the rights of the California Cooperative Canneries, who had been permitted to intervene over the Government's objection for the purpose of having the decree vacated. The decisions of the Supreme Court above referred to, and the mandate thereon, entered in the lower court July 24, 1929, terminated the suspension and restored the consent decree to operative effect. This restoration, however, found certain of the packer defendants with large holdings of stockyard stock and so-called 'unrelated commodities' on hand, accumulated or held over during the period of suspension during which the terms of the decree were wholly inoperative. Although now obligated to dispose of those holdings as rapidly as possible, it has been necessary to extend the time within which to complete such disposition in order to afford the defendants reasonable opportunity to do so in accordance with the terms of the decree. * * *

"Because of the extensions of time granted by the court, the defendants have not as yet been guilty of disobedience to the terms of the decree. * * *"

Senate Document 61, 68th Congress, 1st Session, was referred to by the Attorney General in the above-quoted letter. This document contains a report by a previous Attorney General showing the history of the decree up to March 8, 1924. It sets forth in detail the efforts of the defendant packers to comply with the decree by disposing of their interests in stockyards as well as in the unrelated commodities prohibited by the decree. This report shows that the Swift, Morris, Wilson and Cudahy defendants had complied with the decree in disposing of their unrelated lines except that the Cudahy defendants had on hand an interest in a manufacturing plant engaged in the manufacture of fruit preserves and jellies. Regarding the Armour defendants, the report stated:

"The Armour group of defendants had on hand at the date of the entry of this decree in excess of $10,250,000 worth of stock of such unrelated commodities. They have reported to the court that they have disposed of all of these commodities with the exception of a stock, including labels, valued at $3,352. Armour & Co., however, owns interests in five plants manufacturing such commodities, which are located in the States of Washington, Michigan, New York, and Maryland, and has operated such plants for a limited time each season so as to maintain the same as going concerns in order that they might have a better opportunity to sell them, and, of course, procure a better price therefor when sold. Armour & Co. have distributed the products of these plants and have on hand such products of the value of about $1,000,000. Armour has recently filed a petition for an additional extension of time within which to dispose of these plants and the products thereof. * * * (p. 11)

"The Armour group of defendants have also disposed of their holdings in the Freemont Kraut Co., the Lewellyn Bean Co., the Conway Hotel Supply Co., and of about one-half of their holdings, which half amounted to one-fourth interest, in the Louden Packing Co., all of which were engaged in the manufacture or handling of these unrelated commodities. (p. 12) * * *

"This covers, in substance, the procedure under the decree in this case. It is felt that the decree has been completely carried out, with the exceptions of the provisions relating to unrelated commodities and to stockyards, and that the provisions relating to unrelated commodities have been carried out in spirit and that we are now only striving to carry out the letter thereof." (p. 15)

We therefore submit that neither the record, nor the material outside of the record referred to by counsel for the National Association, justify a claim that the appellees have not in good faith endeavored to perform the obligations imposed upon them by the decree.

B. THE CLAIM THAT THE APPELLEES HAVE REPEATEDLY ENDEAVORED TO DESTROY THE DECREE.

Counsel for the National Association charge (brief, p. 33) the appellees with "twelve years of frantic and unceasing effort to destroy the decree." At page 23 of their brief they charge that in 1922 Armour and Company employed "a spurious independent, California Cooperative Canneries, to attack the decree." At pages 18 and 19 of their brief they state:

> "In 1921 disguised as the California Cooperative Canneries, which was then and is now mortgaged to and financed by Armour and Co. (R. 715, 712) they applied to the Attorney General for a modification of the consent decree."

Senate Resolution 211, 67th Congress, 2nd Session, is cited as authority to support this statement. This Senate Resolution requested the Attorney General to report to the Senate "what steps, if any, have been taken to enforce and carry out the terms of said decree." On February 25, 1922, the Attorney General in response to this Resolution submitted to the Senate a report which was printed as Senate Document No. 145, 67th Congress, 2nd Session. This report states that the California Cooperative Canneries Co. had represented to the Department of Justice, that they had been selling their products, consisting of canned fruits, under a contract with Armour and Company, and that the decree had deprived them of this outlet and had decreased competition in the distribution of canned goods. The Attorney General further reported that the California Cooperative Canneries Co. had requested him to petition the Court for a modification of the decree so as to remove the injunction regarding unrelated lines. The Attorney General's report further states:

> "Following such request by the California Cooperative Canneries Co., several other interests including

> canners, manufacturers, some agricultural organizations and individual farmers requested that the decree be so modified. At no time have the defendants or any of them or anyone claiming to represent the defendants or any of them either moved in Court or requested the Attorney General to move in Court for a modification of such decree with reference to unrelated commodities." (pp. 5-6)

A further report of the Attorney General to the Senate under date of March 8, 1924 (Senate Document 61, 68th Congress, 1st Session) discloses that the request of California Cooperative Canneries Co. for modification of the decree was precipitated by the fact that Armour and Company had served notice of the cancellation of the contract between it and the canneries. In this report under date of March 8, 1924, the Attorney General repeated a statement that neither the defendants, nor any one claiming to represent them, had requested a modification of the decree, and the Attorney General further said:

> "No circumstances have come to my knowledge that could create the least suspicion that the decree was not agreed upon and entered in the best of faith; and as to the effects of the decree there is much dispute. It accomplishes certain objects which some interests regard as most desirable and beneficial to the public but which other interests regard as detrimental to the public welfare." (p. 16)

Notwthstanding the reports thus made by the Attorney General, the Government states at page 10 of its brief, "There is some indication that the defendants almost from the time the decree was entered intended to attack it." The appellees sought openly, in proper judicial proceedings, to have the decree vacated by the motions which were passed on by this Court in *Swift & Company v. United States,* 276 U. S. 311. The making of those motions certainly can not properly be characterized as contuma-

cious conduct. The decree of 1920 is an unprecedented decree and its validity was a matter of grave doubt until settled by the decision of this Court.

C. THE CHARGES THAT APPELLEES FAILED TO MAKE A FAIR DISCLOSURE OF FACTS WITHIN THEIR KNOWLEDGE.

The appellants also charge that the appellees have failed to make a full and fair disclosure of relevant facts within their knowledge and several grounds are urged in support of this claim.

Counsel for the American Association (Brief, p. 25) refer to the fact that F. Edson White, President of Armour and Company, and Gustavus F. Swift, Vice President of Swift & Company, both testified that their companies had not made any definite plans as to what they would do if the court permitted them to engage in the business of retailing meats (R. 636 and 647). The Government produced several witnesses who testified that the selling of meats at retail by a meat packer would tend to antagonize his customers and therefore would not be successful (R. 422, 428, 433). If the appellees were to engage in retailing, it might be necessary for them to dispose of all or a very substantial part of their output in this manner and the magnitude of such an undertaking is indicated by the fact that 25,000 retail stores would be required to dispose of the output of Armour and Company (R. 637).

Conditions in the retailing of meats may be radically changed as a result of the recent quick-freezing process (R. 466). Both Mr. White and Mr. Swift explained that they wished to be free to meet new conditions as they developed (R. 634-5, 647) and that definite plans had not been made. Mr. Frederick S. Snyder had the same view on the question, namely, that changed conditions required that the appellees should have freedom of action. He testified on this subject:

> "I am of the opinion that the large packers should have entire freedom of action so that whatever method

is desirable in their own interest to adopt with reference to distribution, that they shall be free to adopt it." (R. 468)

Government counsel charge that the president of Armour and Company plainly intimated that the power to retail "might be used as a club with which to bring to terms an important customer." (Br. p. 68.) Mr. White testified that the very fact that the privilege of retailing existed might remove the necessity of ever having to do it. His testimony on this subject at page 635 of the record discloses that his theory was that the large chain organizations in purchasing meats from Armour and Company enjoyed greater independence in bargaining than would be the case if they knew that Armour and Company might itself engage in retailing.

Counsel for the American Association emphasize the fact (Br. p. 25) that no showing was made by appellees with reference to conditions existing prior to 1920. Obviously an application to modify an injunctive decree on the ground of changed conditions must deal with conditions as they existed at the time of the entry of the decree.

All appellants claim that the appellees failed to make a full and fair disclosure with reference to the earnings of Swift & Company as compared with Armour and Company. The sales of Swift & Company in 1929 were $1,035,263,000 and its earnings $13,077,000 representing 1.26 per cent on sales (R. 888a). The sales of Armour and Company in the same year were $1,004,796,000 and its earnings were $9,811,000 representing .98 per cent on sales (R. 888a). The president of Armour and Company (R. 633) and the vice president of Swift & Company (R. 649) both testified that they had no explanation to offer for this difference in the rate of return on sales and it is contended that this testimony represents a failure to make a full and fair disclosure of facts. Counsel evidently believe that two meat packers whose volume of sales are

approximately the same should earn approximately the same amount of profits and that if they do not, either packer should, upon inquiry be able to explain exactly why one company earns more or less than the other. We direct attention to the following differences in earnings by meat packing companies in the year 1929:

Company	Sales	Profits	Percentage	Record
Wilson and Company	$308,805,000	$2,305,000	.75	(888a)
John Morrel & Co.	94,660,595	3,435,799	3.62	(867)
George A. Hormel & Co.	38,220,212	2,217,397	5.80	(871)
Rath Packing Co.	33,932,253	495,005	1.46	(873)

If the president of Wilson and Company were asked why Morrell and Company made substantially more money than his company on sales one-third as great, he no doubt would be unable to answer. Both concerns are in the same business and sell the same commodities throughout the United States and in Europe. The foregoing table also shows a comparison in the earnings of two packing companies of substantially the same size—Hormel and Company which earned 5.80 per cent on sales and Rath Packing Company which earned 1.46 per cent on sales. If the president of the Rath Packing Company knew the reason for the difference, the presumption is that he would use his knowledge to correct the difference.

We find the same situation in other lines of business. In 1929 the Kroger Grocery and Baking Company earned $5,919,096 on sales of $286,611,214 (R. 575), whereas American Stores Company engaged in the same business, earned $6,594,822 on sales of $143,346,157 (R. 574).

The reasons which might exist for such differences in earnings are infinite in number, and we see no reason why it should be believed that the presidents of Swift and Armour, two competing companies, had sufficient knowledge of the other's business, to enable them to explain the reasons for the difference in profits.

D. RECIPROCITY IN BUYING AND SHIPPING.

The Government has referred in its brief to the Federal Trade Commission proceedings against Waugh Equipment Company and Mechanical Manufacturing Company, involving reciprocity in buying and shipping. A decision was rendered by the Federal Trade Commission in the Waugh case after the entry of the decree appealed from (15 F. T. C. Dec. 232) and the Government has discussed the findings of the Commission in that decision.

The Mechanical Manufacturing Company was liquidated and discontinued business prior to the entry of the decree of January 31, 1931 (R. 803). Swift & Company did not own any of its capital stock (Petitioners' Exhibit 150, not printed, R. 1173).

The evidence in the record respecting reciprocity appears at pages 799-803. The purpose of this evidence introduced by the Government was stated by its counsel as follows:

> "The purpose for which we are offering this is to show the readiness of these corporations to use their business position and control their business to induce the sale of products in which they are interested. In showing this we concede that this reciprocal shipping and buying arrangement is not peculiar to Armour and Swift; that it is frequently resorted to by other industrial concerns, and sometimes to a degree equal to or perhaps greater than any that we have found on the part of Armour and Swift in this case.
>
> "We are not prepared to state at this time that this reciprocal buying and shipping arrangement is in itself and standing alone illegal, but we believe it is relevant to the question of what use will be made of the power of these two petitioning defendants in case they enjoy the business position which might result after a modification of the Consent Decree." (R. 800)

Neither Armour and Company, nor its president F. Edson White, were defendants in the Federal Trade Com-

mission suit against Waugh Equipment Company (R. 802). Armour and Company owned no stock in the Waugh Equipment Company (Petitioners' Exhibit 118, not printed, R. 1173) and less than half of the company's stock was owned by Armour officials. (R. 637)

Reciprocal buying and shipping has never been condemned by any court or commission prior to the decision of the Federal Trade Commission in the Waugh case. While the Federal Trade Commission has found the practice to be an unfair method of competition, the ultimate determination of that question is for the Court (*Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568) and perhaps a different conclusion will be reached when the question comes before it.

The entire subject of reciprocal buying with respect to railroads is now under consideration by the Interstate Commerce Commission (R. 802).

E. ALLEGED VIOLATIONS OF THE ANTI-TRUST LAWS.

The record contains a summary of testimony offered by the Government with respect to the collection of fats in New York City, the sale of meats in certain sections of Texas and Oklahoma, and the service at cost plan of paying for butter fat (R. 805-06). In lieu of incorporating the testimony of the witnesses relating to these subjects into the record, the parties agreed to a summary thereof, consisting of a substantial copy of a portion of the court's opinion. Regarding the practice of following trucks to ascertain the location of customers from whom fats were purchased in New York City, the court said:

> "It does not appear that the acts of Armour and of Swift were any worse than those of their competitors nor that the final agreements were forced upon the others by Armour and Swift but were for the benefit of all". (R. 805, 1051.)

Regarding the sale of meats in certain sections of Oklahoma and Texas, the court said:

> "While the evidence is conflicting on these points, I am inclined to think that these charges are substantially true but there is no evidence that the officials in the main offices of the defendants had any knowledge of these practices, but on the other hand they had forbidden any agreements or arrangements to fix prices. In fact the prices of the different defendants did not coincide." (R. 806, 1051.)

The lack of knowledge of the incidents which occurred in Oklahoma and Texas by any responsible official of the appellees, not only disproves any claim of illegality or misconduct on the part of the corporations, but prevents the application of the equitable doctrine of unclean hands. This doctrine does not recognize mere imputations of guilt based upon technical theories of agency (*Associated Press v. International News Service*, 240 Fed. 983; affirmed 248 U. S. 215; *Hedman Manufacturing Co. v. Todd Protectograph Co.*, 265 Fed. 273, and *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387, 67 Atl. 339).

The service at cost plan of paying for butter fat was that each seller of milk should pay a fixed charge for the expense of measuring the amount of butter fat in his milk. Armour and Swift endeavored in 1929 to put this plan into effect (R. 806). The court said on this subject in its opinion:

> "They failed in their attempt and their failure is a significant fact in determining their ability or inability to create a monopoly." (R. 1051.)

On the entire subject of the evidence of alleged unfair practices offered by the Government, the court said:

> "These defendants employ over 100,000 employees; Armour and Swift do each an annual business of over one billion dollars, and have innumerable competitors throughout the country. It would seem that these competitors would be anxious to produce evidence of every instance of unfair competition or practices by

> the defendants, but these are the only instances of which any evidence has been offered. On the contrary numerous competitors have testified to the keen but fair competition existing in the meat packing industry." (R. 1051-52.)

The district court made the following finding of fact on this subject:

> "3. That there have been a few sporadic instances of unfair practices and fixing of prices by the defendants, which are more fully set out in my opinion filed in this case. But that apart from these there exists no contracts, agreements, understandings, combinations or conspiracies among the defendants, or between any two of them, in restraint of trade or commerce among the States; no fixing of prices to be paid by them for live stock, raw materials, or products for resale, bought by defendants or any of them; no fixing of prices at which defendants or any of them shall sell products dealt in by any of them; and no apportioning among defendants, or between any two of them, of territory in which, or customers with whom, they, or any of them, shall conduct business." (R. 1110)

The trial court's opinion states that the burden of proof rested upon the appellees to prove changes in conditions sufficient to warrant a modification and continues:

> "But the fact remains that it was open to the interveners as well as to the government to produce testimony of other similar occurrences if such existed. The government too at the outset read a letter from the Attorney General to the President of the Senate dated July 11, 1930, in which he said:
>
> "It is my intention to present to the court every justifiable argument and fact which tends to the conclusion that the decree should not be modified. I have no doubt that those who are interested in obtaining modification will present to the court all the evidence and arguments which tend to support their position;

and in this way it is believed the facts relevant to the determination of this important matter can most clearly and expeditiously be presented to the Court." (R. 1052.)

The court characterized the three incidents of alleged unfair practices as sporadic by saying:

> "There is some testimony as to certain sporadic cases of unfair practices and fixing of prices." (R. 805, 1050.)

The court was undoubtedly correct in referring to these three minor instances as sporadic cases, in view of the country-wide extent of the appellees' business and particularly in view of the announcement of the Attorney General that he would present to the court every fact tending to the conclusion that the decree should not be modified (R. 1052) In *Industrial Association of San Francisco v. United States*, 268 U. S. 64, this court reversed a decree enjoining the defendants from certain alleged violations of the Anti-Trust Act. The court said at page 84:

> "By the foregoing process of elimination, the interferences which may have been unlawful are reduced to some three of four sporadic and doubtful instances, during a period of nearly two years. And when we consider that the aggregate value of the materials involved in these few and widely separated instances, was, at the utmost, a few thousand dollars, compared with an estimated expenditure of $100,000,000 in the construction of buildings in San Francisco during the same time, their weight, as evidence to establish a conspiracy to restrain interstate commerce or to establish such restraint in fact, becomes so insignicant as to call for the application of the maxim, de minimis non curat lex."

CONCLUSION.

We respectfully submit that in the public interest, and in justice and equity to the appellees, the order of the Supreme Court of the District of Columbia of January 31, 1931, should be affirmed.

Respectfully submitted,

FRANK J. HOGAN,
PAUL M. GODEHN,
HENRY VEEDER,
CHARLES J. FAULKNER, JR.,
Attorneys for Appellees.

Washington, D. C.,
March 5th, 1932

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA, vs. SWIFT & COMPANY, et al.	No. 568
AMERICAN WHOLESALE GROCERS ASSOCIATION, vs. SWIFT & COMPANY, et al.	No. 569
NATIONAL WHOLESALE GROCERS ASSOCIATION, vs. SWIFT & COMPANY, et al.	No. 570

MOTION OF COUNSEL FOR AMERICAN NATIONAL LIVE STOCK ASSOCIATION, NATIONAL WOOL GROWERS ASSOCIATION AND NATIONAL SWINE GROWERS ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE, AND BRIEF OF AMICI CURIAE.

GEO. A. CLOUGH,
Hibernia Bank Building, San Francisco, California,
FULBRIGHT, CROOKER & FREEMAN,
R. C. FULBRIGHT,
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Counsel for such Associations, as Amici Curiae.

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In the Supreme Court
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NATIONAL WHOLESALE GROCERS ASSOCIATION, vs. SWIFT & COMPANY, et al.	No. 570

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for American National Live Stock Association, National Wool Growers Association and National Swine Growers Association, re-

spectfully move this Honorable Court for leave to file the accompanying brief in this case as *amici curiae*.

Dated, San Francisco, California,
March 9, 1932.

GEO. A. CLOUGH,
FULBRIGHT, CROOKER & FREEMAN,
R. C. FULBRIGHT,
Counsel for such Associations, as Amici Curiae.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA,
vs.
SWIFT & COMPANY, et al.

CONSENT FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The undersigned, as counsel for American Wholesale Grocers Association, consents to the filing of a brief in the above entitled matter by Geo. A. Clough on behalf of the American National Live Stock Association, the National Wool Growers Association, and the National Swine Growers Association, as *amicus curiae*.

Dated, January 11, 1932.

EDGAR WATKINS,
Attorney for American Wholesale Grocers Association.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1931

No. 568

UNITED STATES OF AMERICA,
vs.
SWIFT & COMPANY, et al.

CONSENT FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The undersigned, as counsel for the United States of America, consents to the filing of a brief in the above-entitled matter by Geo. A. Clough on behalf of the American National Live Stock Association, the American National Wool Growers Association, and the National Swine Growers Association, as *amicus curiae.*

Dated, January 16, 1932.

THOMAS D. THACHER,
Solicitor General.

Breed, Abbott & Morgan
15 Broad Street
New York

January 16, 1932.

Mr. George A. Clough,
Hibernia Bank Building,
San Francisco,
California.

U. S. v. Swift & Company, et al.

Dear Mr. Clough:

We have your kind favor of January 4th addressed for the attention of our Mr. William C. Breed. He is now out of the city.

We are not authorized to consent, but we do not understand that our consent is necessary if the Attorney General has consented. In any event, we shall not oppose.

Yours very truly,
Breed, Abbott & Morgan.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA, vs. SWIFT & COMPANY, et al.	No. 568
AMERICAN WHOLESALE GROCERS ASSOCIATION, vs. SWIFT & COMPANY, et al.	No. 569
NATIONAL WHOLESALE GROCERS ASSOCIATION, vs. SWIFT & COMPANY, et al.	No. 570

BRIEF OF COUNSEL FOR AMERICAN NATIONAL LIVE STOCK ASSOCIATION, NATIONAL WOOL GROWERS ASSOCIATION AND NATIONAL SWINE GROWERS ASSOCIATION, AS AMICI CURIAE.

The American National Live Stock Association, the National Wool Growers Association, and the National Swine Growers Association, and their component organizations, have moved this Honorable Court for permission to appear in the above entitled actions as

amici curiae and present their views with respect to the issues involved therein.

The American National Live Stock Association is an unincorporated association of persons and organizations engaged in the production of cattle, sheep and other live stock, but principally cattle, in 21 western states, and having its office and principal place of business in the City of Denver, State of Colorado.

The National Wool Growers Association is an unincorporated association of persons and organizations engaged in the production of cattle, sheep and other live stock, but principally sheep, in approximately the same area, and having its office and principal place of business in Salt Lake City, State of Utah.

The National Swine Growers Association is an unincorporated association of persons engaged in the production of swine, and having its office and principal place of business in Creston, Iowa.

The American National Live Stock Association includes in its membership the following organizations:

Albany County Cattle and Horse Growers' Association—Wyoming.

Amador-El Dorado Live Stock Association—California.

American Hereford Cattle Breeders' Association—Missouri.

American Shorthorn Breeders' Association—Illinois.

Arizona Cattle Growers' Association—Arizona.

Arizona Wool Growers' Association—Arizona.

Arkansas Valley Stock Feeders' Association—Colorado.

Bear Creek Stock Growers' Association—Nebraska.

Beaver Cattle Association—Utah.

Beaver Creek Cattlemen's Association—Wyoming.

Beaver Creek Live Stock Association—Oregon.

Big Piney Round-Up Association—Wyoming.

Bridger-Washakie National Forest Association—Wyoming.

California Cattlemen's Association—California.

Cattle and Horse Raisers' Association of Oregon—Oregon.

Cattle Sanitary Board of New Mexico—New Mexico.

Central Fremont Cattle and Horse Association—Oregon.

Colorado Stock Growers' and Feeders' Association—Colorado.

Corn Belt Meat Producers' Association—Iowa.

Crow and Indian Creek Association—Montana.

Delta County Live Stock Association—Colorado.

El Paso County Live Stock Protective Association—Colorado.

Frying Pan Stock Growers' Association—Colorado.

Grand Mesa Live Stock Association—Colorado.

Gunnison County Stock Growers' Association—Colorado.

Highland Hereford Breeders' Association—Texas.

Idaho Cattle and Horse Growers' Association—Idaho.

Jefferson County Stock Association—Montana.

Kern River Live Stock Association—California.

Lake Fork Stock Growers' Association—Colorado.

Little Goose Cattlemen's Association—Wyoming.

Madera County Branch, California Cattlemen's Association—California.

Malad Forest Users' Association—Idaho.

Mancos Cattlemen's Association—Colorado.

Montana Stock Growers' Association—Montana.

Mount Whitney Live Stock Association—California.

Nebraska Stock Growers' Association—Nebraska.

Nevada Land and Live Stock Association—Nevada.

Newfork-Eastfork Live Stock Association—Wyoming.

New Mexico Cattle Growers' Association—New Mexico.

New Mexico Wool Growers' Association—New Mexico.

Niobrara Forest Reserve Users' Association—Nebraska.

Northeast Wyoming Live Stock Protective Association—Wyoming.

Plateau Valley Stock Growers' Association—Colorado.

Pueblo County Stock Growers' Association—Colorado.

Ragged Mountain Live Stock Association—Colorado.

Rio Blanco Farmers' and Stock Growers' Association—Colorado.

Rock Creek Cattle Association—Utah.

Ruby Valley Stock Association—Montana.

San Luis Valley Cattle Growers' Association—Colorado.

Saratoga Valley Stock Growers' Association—Wyoming.

Soda Lake Live Stock Association—Wyoming.

Southern Oregon Live Stock Association—Oregon.

Stock Growers' Protective Association—Montana.

Sublette County Cattle Growers' Association—Wyoming.

Surprise Valley Stockmen's Association—California.

Sweetgrass Stock Growers' Association—Montana.

Texas and Southwestern Cattle Raisers' Association—Texas.

Upper Green River Cattle Association—Wyoming.

Utah Cattle and Horse Growers' Association—Utah.

Villa Grove Grazing District Association—Colorado.

Washington State Cattle and Horse Raisers' Association—Washington.

Wenaha Cattle and Horse Association—Oregon.

West River Stock Growers' Protective Association—South Dakota.

Western Hereford Breeders' Association—Colorado.

Western Slope Cattle Growers' Association—Colorado.

Western South Dakota Stock Growers' Association—South Dakota.

Wood River Live Stock Association—Wyoming.

Wyoming Stock Growers' Association—Wyoming.

Wyoming Wool Growers' Association—Wyoming.

The National Wool Growers Association includes in its membership the following organizations:

Arizona Wool Growers' Association—Arizona.

California Wool Growers' Association—California.

Colorado Wool Growers' Association—Colorado.

Idaho Wool Growers' Association—Idaho.

Montana Wool Growers' Association—Montana.

Nevada Land and Live Stock Association—Nevada.

New Mexico Wool Growers' Association—New Mexico.

Oregon Wool Growers' Association—Oregon.

Texas Sheep and Goat Raisers' Association—Texas.

Utah Wool Growers' Association—Utah.

Washington Wool Growers' Association—Washington.

Wyoming Wool Growers' Association—Wyoming.

We shall hereafter refer to them as the Producers.

The consent decree restrained the defendants from dealing in a large number of what has been described as "unrelated commodities." These included foods other than meats. Approximately ten years after the decree had been entered, upon petition of defendants, the lower Court removed said restraint, so far as pertained to the wholesale trade. The appeal is from the order so modifying the decree.

FINDINGS BASED ON CONFLICTING TESTIMONY BINDING UPON APPELLATE COURT.

The appellants base their appeal upon the grounds: (a) that defendants have a monopoly of food commodities; and (b) that there is a combination in restraint of trade among defendants. Both of these points are covered by the findings of the lower Court.

The rule is laid down broadly in nearly every jurisdiction that the findings of the trial Court in a case tried without a jury will not be disturbed by a reviewing Court where the evidence is conflicting.

2 *Rul. Case Law*, 194;

4 *Corp. Jur.* 883;

McKinley Creek Mining Co. v. Alaska United Mining Co., 183 U. S. 563;

Busch v. Stromberg-Carlson Tel. Mfg. Co., 217 Fed. (C. C. A.) 328.

The lower Court found as follows:

"3. That there have been a few sporadic instances of unfair practices and fixing of prices by the defendants, which are more fully set out in my opinion filed in this case. But that apart from these there exists no contracts, agreements, understandings, combinations or conspiracies among the defendants, or between any two of them, in restraint of trade or commerce among the States; no fixing of prices to be paid by them for live stock, raw materials, or products for resale, bought by defendants or any of them; no fixing of prices at which defendants or any of them shall sell products dealt in by any of them; and no apportioning among defendants, or between any two of them, of territory in which, or

customers with whom, they, or any of them, shall conduct business.

* * * * * * *

"7. That none of the defendants has a monopoly in the meat packing industry.

"8. That neither the four defendants, nor any two of them, are combined to monopolize or to attempt to monopolize the meat packing industry."

These findings were sustained by the evidence hereinafter referred to. At least the evidence created a conflict of testimony. Inasmuch as the issues of "Monopoly" and "Combination in restraint of trade" are the only issues raised by the appeal, and those issues are covered by the findings, in support of which some evidence was introduced, the judgment of the lower Court should stand.

The trial Court also found as follows:

"9. That each of the defendants could materially reduce the cost of distributing meats and other live stock products if it engaged in selling, dealing in and transporting food stuffs other than, and in addition to, meat food products.

"10. That each of the defendants, by dealing in food stuffs other than, and in addition to, meat food products, would be enabled to so distribute its overhead and sales costs as to effect economies in the distribution of both meats and other live stock products and of non-meat food products."

(R. 1111.)

"The greatest good to the greatest number" is a basic principle of our Government. Practically every-

one eats meat. It is a staple food. Whatever process or method of merchandising that will lower the cost of any necessity to the masses should be not only tolerated, but encouraged in every legitimate way.

If by the use of their equipment the packers can distribute to the retailers any kind of commodity at a reduced cost, they should be permitted to do so. If when distributing meats they can, by distributing groceries at the same time, deliver their meats at a lower cost, they should be permitted to handle groceries wholesale.

If when distributing live stock products, they can, by distributing groceries, spread the expense of distribution over both classes of goods, and thereby reduce the cost to the consumer of both meats and groceries, they should be permitted to do so.

We have seen that the lower Court found that defendants could "materially" reduce the cost of meat, live stock products and non-meat food products by dealing in foodstuffs other than meat food products. (Findings, supra.)

If there was a conflict of evidence upon these points, the findings are conclusive upon the Appellate Court.

The following testimony supports the above findings:

It was stipulated that witnesses, numbered 30 to 41, testified generally:

> "It is also believed that the existing conditions would be alleviated and that live stock producers would be benefited if the large packers were per-

mitted to handle at wholesale other food products in addition to meat, so that meat alone would not have to bear the entire cost of distribution."

(R. 476.)

Mr. Frederick S. Snyder, one of the most persuasive witnesses, stated:

"In addition to my connection with this concern for the past forty-three years, I was during the war a member of the United States Food Purchase Board; and chief of the division of coordination of purchase, later chief of the meat division and chief of the cold storage warehouse division, chief of the division of miscellaneous commodities, all under the United States Food Administration. I am also chairman of the board of the American Institute of Meat Packers."

(R. 457.)

His testimony is found on pages 457 to 475 R. Mr. Snyder testified:

"The only salvation for the big packer is to fill up his obsolete branch-house facilities to capacity by handling other lines and having freedom to move *the same as the next hundred packers do.* While mere freedom will not fill a branch house, if they are free to do as the next hundred of their competitors, they will find a way that will make it uncomfortable in three of the seven departments in our business in those respects in which we are now protected by this Consent Decree. We are selling three of our seven lines of merchandise protected against the four large packers by this Consent Decree."

(R. 474.)

"I am of the opinion that the large packers should have entire freedom of action so that whatever method is desirable in their own interest to adopt with reference to distribution, that they shall be free to adopt it; whether it means to finance the retailers in the adoption of the new program or to associate themselves with them in any way they see fit to do. It is a very large, new venture, requires a large amount of capital, a large initiative and merchandising ability, and I think the packers should be free to do that work in whatever manner is best in their own interests; and *I conceive that to be in the interests of all parties, both the public and the stock raisers.*"

(R. 468.)

"The keen competition existing in the food industry exists in the retail field as well as the wholesale. The independent meat packers are able to secure more per pound for their products than the large packers and the reason is obvious. The intermediate independent, large, amply capitalized concern of the kind you refer to find their business chiefly in the territory contiguous to their plant. He sells his merchandise. He does not consign it. The senior packers, operating nationally, sell, so far as they are able to do so, but they are compelled to do two things which the other man escapes. They are compelled to clean up the surplus of material which comes to the central marketing areas, and they are compelled also to consign a very high percentage of their product to their distributing houses and sell it against local demand conditions. They can not create demand. They can only supply it. When they send an excess to the market, and that sells

for less than it sells in Chicago, then their average is pulled down to that extent. They perform a service to the producer by that action. They have also kept their own plants operating at something approximately normal capacity, which is also another economic necessity for them, but they pay a price for it in the reduced income that they get from their goods shipped east. That is a serious handicap to these senior packers. Mind you, when I take this position in which I feel that the present situation is improper, in view of the very radically changed conditions, both with respect to impending developments and those which began four years ago, but are continuing to expand, I am saying that against my own personal interest. But I think in the long run we suffer from the lack of a fair field and no favor principle. I think we all will get on further and be further 25 years from now if in the interim we work on the principle of a fair field and no favor rather than have part of our organizations in this country shackled. I think it is inevitable that these new conditions of distribution will entail a multiplicity of new problems which will affect the defendants very markedly. They should be free to deal with them."

(R. 471-2.)

There was much other evidence upon the points covered by the findings. We present this much to show there was at least a conflict in the evidence relating thereto. There being such conflict, the findings are, as we understand the rule, conclusive upon the Appellate Court, and for that reason the decision of the lower Court should be sustained.

CHAIN STORES ARE ASSURANCE AGAINST MONOPOLY BY BIG FOUR.

The main charge against the defendants was that they monopolized the food supply of the country.

The large volume of trade in foods by chain stores is a reasonable assurance against such monopoly.

The evidence shows:

(1) The increase in the number of stores operated by chains in the United States since the entry of the decree has been without parallel in history.

(2) There are approximately 60,000 stores in the United States operating chain food stores. (R. 1046.)

(3) There are 6000 independent wholesale grocers in the United States. (R. 773.)

(4) There are approximately 300,000 retail food stores in the United States, not including the chain stores. (R. 519, 773.)

(5) Buying in large volume is one of the principal advantages which the defendant packers had over small competitors prior to entry of decree. That advantage is now available to retail chain stores and independent retail and wholesale chain stores. (R. 764-5.)

(6) In 1927 there were 49,787 establishments engaged in the manufacture of food in the United States. (R. 389.)

(7) In 1927 there were 11,774 establishments in the United States engaged in the manufacture of edible food products from animals. (R. 389.)

(8) In 1927 there were 38,013 establishments in the United States engaged in the manufacture of vegetable products and beverages. (R. 389.)

(9) There were in 1927 in the United States 1250 meat packer and slaughter establishments in the United States, that is, 1250 plants. (R. 390.)

(10) 327 of the meat packer and slaughter establishments, referred to in paragraph (9) were in 1927 doing an annual business in excess of $1,000,000.00 each. (R. 391.)

(11) Between fifty and sixty per cent of the retail grocery stores in the United States sell meats. (R. 765.)

(12) Since the end of 1929, 166 new packers, doing a sufficiently large business to bring them under jurisdiction of the act, have come under the administration of the Packers and Stock Yards Act—998 in all. (R. 45.)

(13) Mr. Goldberg of Birmingham, Alabama, started with $23,000.00 capital in 1922. He had increased it to $400,000.00 in 1930. He delivers all of his product by motor trucks. (R. 429.)

(14) Mr. Wilkinson, of Wilkinson Gaddis Company, wholesale grocery and chain, opened up chain stores because "the so-called old line independents were decreasing in number" and the old line retail trade did not exist for his company. Forty per cent of his trade was in meats. (R. 780.)

(15) Rath & Company's business increased from $8,000,000.00 in 1920 to $33,932,000.00 in 1929. (R. 549.)

(16) The business of Morrell & Company increased from $51,000,000.00 gross sales in 1920 to $101,000,000.00 in 1929. (R. 546.)

(17) The car route business of Swift & Company from the City of St. Louis dropped from 8146 cars in 1925 to 4341 in 1929, and is still dropping. The number of carloads from 1930 will be less than that of 1929. (R. 667-8.)

(18) The weight per order for car route distribution dropped from 206 pounds in 1923 to 165 pounds in 1929, a decrease of 41 pounds per order. (R. 669.)

(19) Some independent packers make more money, not only in dollars, but in percentage on invested capital, than Cudahy or Wilson. (R. 736.)

(20) Transportation of food products by auto truck has greatly increased since entry of the Consent Decree. Much of the meat and other foods is produced locally. It would be impracticable for defendants to monopolize transportation of food products by motor trucks. (R. 679-682.)

It would appear from this evidence that there is little danger of the defendant packers obtaining a monopoly of food products.

The chain stores, the organizations of independent grocery stores, and the buying agencies, it would seem, are able to buy and ship on as favorable terms as the larger packers.

Concentrated selling in chain stores of foods other than meats displaces the sale of meats. (R. 694.)

Judged by the results, it is manifest that there is neither any monopoly, nor any successful combination in restraint of trade on behalf of the packers. The independent packers, the chain stores, and the independent chain grocers, have experienced greater prosperity than the defendant packers. If during the ten years last past the packers had outdistanced the chain stores, the independent packers, chain groceries, quick-freezing process as applied to fish, or the renderers of fat and by-products, as those same parties have outdistanced the defendant packers, there would be substantial evidence of a combination in restraint of trade, but when we consider the development of the chain store, the success of independent packers and the improvement in conditions among independent retail grocery chains, it cannot with reason be said that there has existed on behalf of defendants any monopoly or a combination in restraint of trade.

If this business cannot be held by the old line retail store because of inefficiency and antiquated methods—if it stands waiting the advent of new methods and efficiency—is there a legal, moral or equitable reason why the big packer should not be permitted to participate in the competition for that business and to become an actor in the campaign of progress and efficiency?

The live stock producers need the assistance of the most efficient distributing systems. It is unfair to them to restrict or handicap the agencies through which their product is distributed while the distribut-

ing agencies of competing foods are unrestricted. Especially is this true in view of the recent development in independent retail stores and chain stores, good roads, and new methods of transportation.

All new plants and equipment of these small independent packers who are expanding so rapidly and who are taking the business away from the big packers are being paid for out of moneys that are collected from the producers and the consumers. The present equipment of the packers is probably sufficient to handle the business.

If these small packers and retailers and the chain stores can, under normal conditions, take the business away from the big packers, we have only commendation for their efficiency; but if their success is to any material degree the result of the injunctions contained in the consent decree, that decree does then in fact penalize the public and the live stock producers, for they are compelled to pay for duplicate distributing equipment and the incidental loss due to the shifting of business from one group to another.

We submit that the evidence above recited discloses that the defendant packers do not possess a monopoly of meat or any other food product, and that the chain stores, integral and independent, are a reasonable safeguard against a future monopoly by them.

USE OF REFRIGERATOR CARS.

Considerable evidence was introduced in an attempt to make it appear that the defendant packers were permitted to ship dry groceries in their refrigerator cars carrying carcasses of meat, without paying any freight thereon.

Appellants contend that because the packers might ship considerable quantities of dry groceries with their fresh meats and by-products, that they would be able to deliver their groceries at such low figure that they could sell at prices lower than the wholesale grocer, and that there would follow, therefore, a monopoly upon all foods by defendant packers.

It is inconceivable to us that the Interstate Commerce Commission would permit such a thing.

If the packers were able to ship in their refrigerator cars twenty or thirty per cent in weight or volume of dry groceries, it does not seem that even that would enable them to acquire a monopoly of the grocery business, for the volume of meat consumed as compared with the volume of other foods is so small that it would require the shipment of a tremendous amount of meats to enable the packers to supply the average retail grocery trade with groceries shipped free of freight in such refrigerator cars. But, as we understand the law, there is no such thing as free freight. The packers in shipping their meat in refrigerated cars have to pay freight on the groceries in those cars. Instead of having free freight, as conditions have been in the past few years, they have frequently paid penalties for shipping meat in the

refrigerator cars. In 1929 the penalties from the St. Louis branch of Swift amounted to $57,000.00. (R. 668.)

If it should be true that by shipping fresh meat and groceries together, freight costs may be reduced, that would necessarily be available to the independent packers and every person who desired to ship those commodities. If such an economy is possible, it would be against the interest of the public to deny that privilege to those who could use it to the greatest advantage of the public.

The producers favor ownership and use of refrigerator cars by the packers. These cars are a material factor in the distribution of meats and the by-products of live stock. Their use contributes to the economy of distribution. The producers, as well as the packers, should be permitted to take advantage of that economy. Whatever cheapens food to the consumer, or increases the price of live stock to the producer, should be encouraged—not prohibited. The Federal Government is today spending large sums and devoting much consideration to problems designed to relieve agricultural conditions, and also to cheapen necessaries of life to the consumer. The Hoch-Smith Resolution recommending low rates on agricultural products, the creation of the Federal Farm Board and the intermediate credit banks, provision for the creation of the national agricultural credit corporations, the recent two billion dollar legislation, and numerous other acts of Congress, all disclose serious effort on behalf of the Federal Government to relieve existing

unfavorable conditions of the farmers. *Consistency requires that economical methods of distribution of food products be fostered.*

Neither the packers nor the live stock producers have ever objected to the grocer handling meats and live stock by-products. There is no consent decree or statute prohibiting him from doing so, and, in fact, today he is in considerable measure actually doing that very thing. (R. 667.)

It has been estimated by economists that eight billion dollars is the annual bill for waste in distribution of all commodities. Dealing in unrelated commodities and the use of refrigerator cars by the packers would eliminate some of that waste.

Counsel say the packers could ship other goods without cost as "the nature of the meat packing business requires that the cars move in any case." But neither the nature of the packing business nor any other business requires that the cars "move" at a loss.

That is just where the live stock producer is interested. His product must often be handled at a loss in these refrigerator cars. There is no benefit to the public in that.

If the packer should ship other commodities in his car, the live stock producer would not have to bear an unjust portion of the cost of distribution.

If groceries shipped in refrigerator cars bear their fair portion of the cost, they would not be shipped any more cheaply, probably not as cheaply, as if shipped in the usual method.

MOTOR TRUCK TRANSPORTATION.

Next to the chain store, probably the most important development in the purchase and distribution of live stock products and food supplies has been the motor truck transportation. This development is of special importance because of its being peculiarly limited to local conditions. It appears from the testimony that motor truck transportation of live stock to markets and of slaughtered meats and other food products from the packing house to the retailer is confined within a radius of seventy-five to two hundred miles, but principally within seventy-five to one hundred and twenty-five miles. See the following testimony:

R. 426, Hunter, radius 100 to 125 miles; makes possible daily deliveries.

R. 421, Mayer, radius 75 to 100 miles; trucks cheaper; use trucks mostly.

R. 776, Bruner, customers call in own trucks.

R. 779, Herscher, bulk deliveries by truck.

R. 429-30, Goldberg, 85% by truck.

R. 430, Miller, distribute by truck 200 miles; increase in good roads.

R. 432, Fischer, distributes all products by motor trucks, 60% to 70% bought at plant; farmers truck it in.

R. 437, Madden, Knoxville, Tennessee, deliver in trucks up to 100 miles.

R. 436, stipulation; sometimes stock is trucked into plant.

R. 435, Madden; penalty saved by shipping canned goods; deliveries by truck 100 to 125 miles.

It was stipulated by the parties that certain witnesses would testify as follows:

> "2. That in selling their products they can make deliveries by motor truck transportation to advantage up to a radius of 100 to 125 miles from the plant; that in that radius such deliveries are superior to rail deliveries, because they enable store-door deliveries and eliminate cartage charges at points of shipment and destination; and enable more frequent deliveries and the maintenance of more personal contact with their customers; that, for such deliveries, their own trucks are sometimes used for shorter distances, and commercial truck lines for longer distances; that within this radius, this truck method of delivery, which has developed largely in the past ten years, has largely superseded peddler refrigerator car deliveries previously used; that Swift and Armour and other large packers use this mode of delivery, in competition with them."
>
> (R. 436.)

The foregoing testimony discloses that the large defendant packers, in order to maintain a monopoly or combination in restraint of trade in food products, would have to go into each local community and so manipulate his business as to crowd out and eliminate each local representative packer and slaughterer.

We submit that the moment the prices paid by the packers became so low or the prices demanded became so high that more than a close margin of profit was

available, the local independent packers would be on hand to take advantage of the situation.

THE FIXING OF PRICES—RESTRAINT OF TRADE.

Certain testimony was introduced by the Government, apparently for the purpose of showing that the defendant packers had unlawfully combined in the fixing of prices. This, of course, was denied by the defendants. The lower Court regarded the evidence on this point as of little importance. (See Findings 2 and 3, R. 1110.)

But, aside from that, the Government has not attempted to prove that the prices shown to have been established by any of the defendants, and claimed to have been established by them in combination with others, were unreasonable. We understand it to be the law that prices may be lawfully fixed by agreement so long as the prices are not unreasonable and do not constitute a restraint of trade.

It is not unlawful to fix prices if prices are reasonable. Injury to the public is the recognized test of illegality.

Dodge v. Ford Motor Co., 204 Mich. 459, 3 A. L. R. 413;

U. S. v. U. S. Steel Co., 251 U. S. 417.

Counsel on behalf of the Government stipulated as follows:

"It is admitted that there is ample market news service available so that anybody who is interested can learn live stock prices and market

conditions practically whenever they are interested in doing so."

It is apparently contended by counsel for the Government that the interchange of price lists discloses a combination among the packers and their competitors in violation of the law. The interchange of prices has been going on for the past ten years, and, as we recall, it is mandatory under the laws of some States, or, rather, the posting of the prices is.

In considering the evidence, the Court should bear in mind the different circumstances of the Government now and when the decree was entered.

When the decree was entered, it was because of a general public demand of the live stock producers, grocers and other groups. Today the Government finds itself a defendant, as it were, in a proceeding to set aside the decree.

GROCERS v. PACKERS.

MUST THE GROCERS BE FAVORED AS AGAINST THE PACKERS, OR SHALL THEY STAND ON AN EQUAL BASIS?

The appellants are themselves wholesalers. They do not represent the producers nor the consuming public. They are simply competitors of respondents.

The grocers say the packers will take their business. The packers say the grocers—chain store grocers—have taken their business. Probably both are correct. The chain stores have taken some of the packers' trade. If the packers are permitted to handle gro-

eeries, undoubtedly they will get some of that business back. As to who will be the more successful depends upon efficiency. We believe that in this direction lies justice and promotion of the public welfare. If the packers prove the more efficient, they will get the business, and they will deserve it. But the big packers have not proved more efficient than the smaller packers. The record discloses that numerous small packers have in recent years increased their capital and their reserves and have paid larger dividends than respondents. That would seem to prove either that the smaller plants have been more competently managed than the respondents, or that natural or local conditions favored them. If this be true, then the smaller packers are more dangerous as competitors of the appellants than respondents. The smaller packers are not restrained from handling groceries, and if what we have just said be true, then successful small packers are now, and have at all times been, more efficient competitors of appellants than the respondents. If these very successful small packers have not succeeded in taking the business of appellants away from them, there is little reason to fear that the less efficient and larger respondents will do so.

The appellants base their case largely upon the contention that the packers, because of their being able to ship other commodities and meat and its by-products in their refrigerator cars, etc., are able to sell at lower prices and to make greater profits than the small packers. It is conceded that the refrigerator cars are available to everyone, small packers as well

as large. So far as we recall, that fact is not disputed. Now, if there is such a great profit to be made in the distribution of groceries and other commodities with meat and its by-products, why have not the larger independent packers enjoyed this increased profit, and why have they not become a menace to the smaller independents? It does seem that if there were such great profits in this method of combined distribution, that some of the larger packers, such as Morrell & Company, Hormel, Dold and others, would have themselves, by the use of those methods, cut into the business of the appellants. While the business of many of the so-called independent packers has grown by leaps and bounds, it does not appear that the growth was due to the fact that they were not restrained from distributing unrelated commodities with their meats and by-products.

The only basis upon which the defendant packers are subjected to handicaps in their business is that of volume. Appellants fear them because of the volume of their business. It is not unlawful to do business in large volume.

U. S. v. U. S. Steel Co., 251 U. S. 417;
U. S. v. International Harvester Co., 274 U. S. 673.

Under prevailing conditions we are of the opinion that the packers, under proper administration of the Packers and Stockyards Acts, will conduct their business fairly.

If the packers, by reason of better methods, better equipment, or greater efficiency, or for any reason, can deliver to the consumer the commodities handled

by the appellants more cheaply than appellants, then they should be permitted to do so, not prohibited therefrom.

We have not been able to discover from appellants' presentation of their case any motive other than a desire to protect themselves from the competition of respondents. To do this they say this competition is unfair—monopolistic. If they cannot compete in the sale of groceries, surely it will be because they cannot compete on the same terms, which means service and price. If they cannot compete in terms of service and price, the public—producer and consumer—are the ones who will suffer by their being artificially maintained in business. This is not economically sound, nor is it legally just. The appellants have no special right to immunity from competition. The operation of the consent decree in effect amounts to a subsidy in favor of the appellants. No other group of merchants is subsidized so far as we know.

In the "Report of the Federal Trade Commission upon the History and Present Status of the Packers' Consent Decree," dated February 20, 1925, signed by Mr. Nelson B. Gaskill, Commissioner, in the conclusion at page 36, it is stated:

> "The public interest in the field of distribution is in the existence of the open possibility to the development of its greatest efficiency. It would seem that no agency should be excluded therefrom or prevented from proving its worth in that field, unless there is something more than *a conflict with previously asserted private rights presented as an obstacle.*"

We take this to mean that the old line grocer with antiquated methods has no right to protection from his more efficient competitor merely because he "got there first." We submit that the statement expresses a sound policy.

The spread between the wholesale cost of meat and the retail price of meat is believed to be greater at the present time than ever before.

Increase in the cost of distribution of meats has been greater, probably, during the past decade than in any other commodity.

The change in the price of meat at retail to correspond with the price to the producer would be a major influence in maintaining the market for live stock.

The grocers' opposition to the modification of the decree is based upon personal interest, not public welfare.

We concede a like personal interest indirectly in the producers, but our contention is based mainly upon the fact that the public will be benefited by lower prices to the consumer. That will, it is hoped, create a larger demand for the product, and thereby benefit the producer.

APPEAL BY THE GOVERNMENT.

It should be borne in mind that the relief prayed for in the original complaint was based upon the contention that the Big Five packers (a) had a monopoly of the food commodities; and (b) had entered into an unlawful combination in restraint of trade. If the Government were still of the opinion

that there existed the conditions complained of in its original complaint, its position would be consistent, but the Government stipulated as follows:

> "That the individuals, firms and corporations, engaged in the meat packing business in the United States, to the number shown or which may be shown by evidence in this case, owned and controlled independently of each other, are in active competition with each other in the purchase of livestock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell."

Having so stipulated, we do not see how the Government is now in a position to present the same contention which it did in its original bill; nor do we feel that any particular consideration should be given to the fact that the Government has appealed.

QUICK-FREEZING PROCESS.

The live stock producers are hopeful that the quick-freezing process will facilitate and cheapen the storage and distribution of meats; that it will thereby procure a broader, more stable and better market, but the process is still in the experimental stage, as far as meats are concerned. The evidence in this case does not show that the process has been tested to a sufficient extent to make it the basis for an intelligent disposition of the issues involved.

The producers were in favor of the packers retailing meats long before the entry of the consent decree or the passage of the Packers and Stock Yards Act. They may consistently advocate modification of that

decree. See resolution of American National Live Stock Association.

There is no overproduction of meats in the United States. If the price to the consumer were lower, larger quantities would be consumed. The difficulty is the cost to the consumer, not the quantity.

The principal factors in the cost to the consumer are the cost of production and the cost of distribution.

Whatever law or condition restricts the protection or distribution of live stock or its by-products hinders the live stock producer and increases the cost of meat to the consumer.

If the packers were permitted to handle meats and unrelated commodities, it is believed that that would give them access to a larger market, and enable them to pay a better price to the producer of live stock, and lower the cost to the consumer.

The live stock producers desire to sell their product to the best advantage. They must sell to the packers. They desire that the packers be in a position to pay the best possible price. They believe that it would benefit the packers to be permitted to deal in unrelated commodities. Anything that will increase the profits of the packer will, they believe, directly benefit the producer.

No other group of agriculturists are compelled to market their product through agencies burdened with restrictions similar to those imposed by the consent decree.

The large packers have been the major avenues for the marketing of live stock. They have ben prevented by the terms of the decree from competing

with the new conditions. They are not permitted to develop chain retail meat stores, and they are not allowed to handle unrelated commodities or develop their own stores in connection with their established business of distributing and selling meats.

Because of the restrictions placed upon them by the consent decree, live stock and its by-products have been hindered from holding their own with competing products handled by chain stores. Whether or not this method will be permanent or of lasting benefit to the country may not be known, but we are now confronted with "a condition." The only thing that seems likely to maintain and preserve the market for live stock products in their proper relation to other commodities is to make it possible for the agencies handling those products to adopt different methods from those now used, viz., to handle other foods and unrelated commodities.

The consent decree must be modified before defendants can do that.

We respectfully submit that the evidence abundantly sustains the decision of the lower Court, and that the judgment should be affirmed.

Dated, San Francisco, California,
March 9, 1932.

GEO. A. CLOUGH,
FULBRIGHT, CROOKER & FREEMAN,
R. C. FULBRIGHT,
Counsel for American National Live Stock Association, National Wool Growers Association and National Swine Growers Association.

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Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568

UNITED STATES OF AMERICA
v.
SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION
v.
SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION
v.
SWIFT & COMPANY ET AL.

MOTION OF COUNSEL FOR THE TEXAS & SOUTHWESTERN CATTLE RAISERS' ASSOCIATION AND THE KANSAS LIVESTOCK ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE, AND BRIEF OF AMICUS CURIAE.

DAYTON MOSES,
Counsel for such Associations, as Amicus Curiae.

Aviation Building,
Ft. Worth, Texas.

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NATIONAL WHOLESALE GROCERS ASSOCIATION

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned, as Counsel for the Texas & Southwestern Cattle Raisers' Association and The Kansas Livestock Association respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*.

DAYTON MOSES,
Counsel for such Associations,
as Amicus Curiae.

Supreme Court of the United States

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SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION

v.

SWIFT & COMPANY ET AL.

BRIEF OF COUNSEL FOR THE TEXAS & SOUTHWESTERN CATTLE RAISERS' ASSOCIATION AND THE KANSAS LIVESTOCK ASSOCIATION, AS AMICUS CURIAE.

I.

PRELIMINARY STATEMENT.

The Texas & Southwestern Cattle Raisers' Association is an organization, established in 1877, for the purpose of fostering and protecting the interests

of cattle raisers in the State of Texas and adjoining States; such organization is composed of about 3,500 farmers and ranchers owning approximately two million head of cattle, the majority of the membership consisting of cattle raisers residing in the states of Texas, Oklahoma, Kansas, Colorado, New Mexico, Arizona, Arkansas and Louisiana.

The Kansas Livestock Association is an organization established for the purpose of fostering and protecting the interests of the livestock producers in the State of Kansas; such organization is composed of about 11,500 members who own approximately 80 per cent of the beef cattle, and 65 per cent of the sheep and hogs marketed from the State of Kansas.

Through actual experience gained in the marketing of their own animals, the members of these two organizations are familiar with conditions now prevailing in the livestock markets of the country and with the changes which have occurred in such conditions since 1920. The members of these organizations realize the importance of efficient and economical distribution of the products of their livestock, and are deeply concerned over the necessity for improving such distribution by every possible means. They believe that one of the most harmful barriers to the economical distribution of meats and other food products is the Decree entered in this cause, whereby the larger companies engaged in the meat packing industry are prohibited from dealing in, and from using their distributive facilities and equipment in the handling of food products other than meats. The packing companies, defendants herein, require and use widespread distributive

facilities, equipment and organizations in marketing products of the livestock industry. Due to the provisions of the Decree in this cause, the heavy burden of such distributive costs is borne *solely* by livestock products. These distributive costs should be, and would be, lessened if the defendant packing companies were allowed to utilize completely and more efficiently their distributive facilities, equipment and organization, now necessarily required in the handling of meats and meat food products, in the handling and distribution of other food products.

Accordingly, these Associations of livestock producers sought to intervene in the Court below. Their petition for leave to intervene was denied, but the Court granted leave to file brief as *amicus curiae*.

While recognizing that the public interest, as a whole, is paramount and decisive of the issue here involved, we urge that in the determination of such issue the interests of the livestock industry are directly affected, and entitled to at least as serious consideration as may be accorded those of any other section of the public.

Briefly stated, the question is whether there now exists a monopoly in the meat packing industry and a dangerous probability of a food monopoly by the defendant packing companies, if the Decree herein be modified so they may handle other food products in addition to meats and meat food products. Believing that such are not the facts, but on the contrary, that the complete utilization of the distributive facilities of the defendant companies in the handling of food products will result in substantial economies of benefit both to the growers of livestock

and to the consuming public, we submit the following points:

II.

SUMMARY OF ARGUMENT.

A. The record herein proves the absence of any monopoly by the defendant companies in the buying of livestock, or in the sale of the products thereof.

B. The record herein discloses the improbability, if not indeed, the impossibility of any food monopoly by the defendant companies.

C. The record herein discloses that the distributive facilities, equipment, and organizations of the defendant companies can be employed more efficiently and economically if utilized for the distribution of food products in addition to meats and meat food products.

III.

ARGUMENT.

A. The Record Herein Proves the Absence of any Monopoly by the Defendant Companies in the Buying of Live Stock, or in the Sale of the Products Thereof.

In the bill of complaint filed herein in 1920, it was specifically charged that the defendant packing companies had achieved a monopoly in the meat packing business (R. 17). In 1930, the Court below stated, after hearing the sworn testimony of a great number of witnesses consisting of livestock producers,

livestock commission men, order buyers, officials of the Packers and Stockyards Administration of the Department of Agriculture, many competitors engaged in the meat packing business, and others:

> "It is conceded that there is today no monopoly in the meat packing industry. The parties have stipulated:
>
> > 'That the individuals, firms and corporations, engaged in the meat packing business in the United States, to the number shown or which may be shown by evidence in this case, owned and controlled independently of each other, are in active competition with each other in the purchase of livestock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell.' (R. 1043.)
>
> * * * * * * * *
>
> "The testimony is uncontradicted that the four present groups of defendants are independently owned and controlled and are in active competition in the purchase and sale of livestock and the sale of meat products. (R. 1044.)
>
> * * * * * * *
>
> But in the instant case no one of the defendant groups has anything like a control of the business. The business of each is far less than that of its combined competitors. The great weight of the testimony is that no combination or agreement in restraint of trade exists between them." (R. 1050.)

The above statements, from the opinion of the Court below, are based upon definite positive findings of fact, amply supported by the evidence in the

record. In such evidence appears the testimony, (oral or by stipulation), of *ninety-five livestock producers,* who are thoroughly familiar with conditions as they actually exist in the marketing of livestock. *These witnesses are the leaders of the livestock industry in the United States.* Practically all of them are officers, directors, or representatives of various National and State livestock organizations. Among such witnesses were the following:

J. Elmer Brock, Pres., Wyoming Stockgrowers' Association, Buffalo, Wyoming; R. W. Brown, Missouri Farm Bureau Federation; Dan D. Casement, Manhattan, Kansas; Kenneth Chalmers, Colorado Wool Growers Assn; James Cook, Northwestern Co-op. L. S. Shippers' Association, Clearwater, Minn.; J. M. Coyner, Secretary, Winconsin Livestock & Meat Improvement Council, Chairman, Committee of National Swine Growers' Assn. on Register of Performance for Swine, Madison, Wisconsin; E. L. Dana, Parkman, Wyoming; B. F. Davis, Colorado Stockgrowers Assn., Pres., Colorado Farm Bureau, Past Secty., Wyoming Stockgrowers, Denver, Colorado; Dr. George M. Babcock, Rock Island, Illinois; A. E. De Ricqles, Denver, Colorado; T. J. Drumheller, Washington Wool Growers' Assn.; W. I. Drummond, American Farm Congress, Kansas City, Mo.; Earl Elijah, Eastern Iowa L. S. Marketing Association; Knute Espe, Iowa Cooperative Live Stock Shippers Assn.; H. W. Farr, Pres., Nebraska-Colorado Lamb Feeders Assn., Greeley, Colorado; Dr. I. L. Gotthelf, Pres., Saguache Lamb Feeders' Assn., Saguache, Colorado; Robert Graham, Pres., Nebraska Stockgrowers' Assn., Alliance, Neb.; Mac Hall, Denver, Colorado; F. W. Harding, Gen. Executive, Ameri-

can Shorthorn Breeders Assn., Chicago, Ill.; Mr. Harris, Coop. Auction Yards, Ky.; Dan Hildebrand, Nebraska Improved Live Stock Breeders Assn., and Nebraska Cattle Feeders Assn.; Harry Hopley, Pres.; Interstate Organization of Meat Producers, Atlantic, Ia.; Professor E. H. Hostetler, No. Carolina Agricultural College, Secty, Southern Livestock Association, Raleigh, N. C.; J. W. Hudelson, Pomona Kansas; A. A. Johns (Senator), Arizona Wool Growers' Association, Prescott, Ariz.; Ben Kemper, Denver, Colo.; R. M. Kleberg, Corpus Christi, Texas; R. P. Lamont, Jr., Pres., American Hereford Breeders Assn., Pres., Western Packing Company at Denver, Larkspur, Colo.; Fred F. McArthur, Oakland, Iowa; S. W. McClure, Idaho Wool Growers' Assn.; Ray McElrath, Melville, Iowa; Arden McKee, Pres., National Swine Growers' Assn., Preston, Iowa; Sol Mayer, Member, Sheep & Goat Raisers' Assn., San Angelo, Texas; Jewell Mayes, Secty, Missouri State Board of Agriculture, Jefferson City, Mo.; A. R. Mitchell, Former Pres., American Hereford Cattle Breeders' Assn., Member, New Mexico Stockgrowers, Albert, N. M.; P. C. Murphy, Co-op. Wool Growers Assn. of S. Dakota; Floyd Nichols, Capper Pres, Topeka, Kansas; E. A. O'Neil, President, Alabama Farm Bureau Federation; L. B. Palmer, Ohio Farm Bureau Federation; E. A. Phillips, Secty, Montana Stockgrowers' Assn., Helena, Mont.; F. A. Phillips, Cattle & Horse Raisers Assn. of Oregon; E. C. Rector, Ohio Livestock Co-op. Assn., Circleville, O.; Roscoe Rich, Idaho Wool Growers' Assn.; James A. Riggs, Sullivan, Indiana; C. C. Roberts, Marion, O.; Colonel George Grant Seamon, Taylorville, Ill.; J. B. Wilson, National Wool Growers' Assn., Wyoming Wool Growers' Association, McKinley, Wyo.; W. H. Settle, Indiana Farm Bureau

Federation; J. Blaine Shaum, Tarkio, Mo.; Harry Snyder, Billings, Mont.; E. B. Spiller, Secty, Texas & Southwestern Cattle Raisers Assn., Fort Worth, Texas; Sam G. Thompson, Center Junction, Iowa; Dan Wallace, Editor, The Farmer, St. Paul, Minn.; Senator Nate C. Warren, Member, Nebraska-Colorado Lamb Feeders' Assn., Fort Collins, Colo.; C. R. White, American Farm Bureau Federation; J. D. Yaeger, Nevada State Farm Bureau Federation; James West, V. P., Texas & Southwestern Cattle Raisers Association, Houston, Texas; Hubbard Russell, Former President, California Cattlemen's Association, Former President, Western Marketing Association, Los Angeles, Calif.; Senator C. H. Williams, Pres., Montana Wool Growers Assn., Deer Lodge, Mont.; Charles D. Carey, Chairman, National Live Stock and Meat Board, Cheyenne, Wyo.; Senator Frank O. Horton, Former Vice-Pres., Wyoming Stock Growers Assn., Buffalo, Wyo.; Charles Belden, Director, American National Live Stock Assn., Pitchford, Wyo.; Field S. Bohart, Former Pres., Colorado Stock Growers Assn., Director, American National Live Stock Assn., Colorado Springs, Colo.; J. H. Nason, V. P., Western-South Dakota Stock Growers Assn., Spearfish, S. D.; E. Ray Cowden, V. P., Arizona Stock Growers Assn., Director, American National Live Stock Assn., Phoenix, Ariz.; Harry Saxon, Former Pres., Arizona Stock Growers Assn., Dir., American Natl. Live Stock Assn., Wilcox, Ariz.; Wayne Thornburg, Former Vice-President, Arizona Stock Growers Assn., Director, American National Live Stock Assn., Phoenix, Ariz.; P. S. Dorris, Former Pres., California Cattlemen's Assn.. and of Western Marketing Assn., Alturas, Calif.; Ezra Baer, Director, American National Live Stock Assn., Meeker, Colo.; W. S. Whinnery, Former

President, Colorado Stock Growers Assn., Director, American National Live Stock Assn., Lake City, Colo.; W. J. Miller, Former Pres., Kansas Live Stock Assn., Topeka, Kans.; W. H. Donald, V. P., Montana Stock Growers Assn., Melville, Mont.; J. A. Donovan, Director of Montana Stock Growers Assn., and American National Live Stock Association, Butte, Mont.; J. Terrett, V. P., Montana Stock Growers Assn., Brandenburg, Mont.; Dan Adamson, Former Pres., Nebraska Stock Growers Assn., Director, American National Live Stock Assn., Cody, Neb.; George Cristopher, Director, Nebraska Stock Growers Assn., Valentine, Neb.; Vernon Metcalf, Secty, Nevada Land & Live Stock Assn., Reno, Nevada; E. B. Mitchell, President, Highland Hereford Assn., Marfa, Texas; T. B. Masterson, Director of Texas & Southwestern Cattle Raisers Assn., and of American National Live Stock Assn., Truscott, Texas; R. M. Faddis, Director, Wyoming Stock Growers Assn., Director, American National Live Stock Assn., Sheridan, Wyo.; Caesar Kleberg, Asst. Manager, King Ranch, Director, Texas & Southwestern Cattle Raisers Association, Kingsville, Texas; Ed Springer, Director, New Mexico Stock Growers Assn., Director, American National Live Stock Assn., Springer, N. M.; A. R. Modisett, Director, Nebraska Stockgrowers' Assn., Director, American National Livestock Association, Rushville, Nebraska. (R. 560-64.)

As to these witnesses, representing the livestock industry, it was stipulated, that they were available to the petitioning defendants as witnesses and would, if called to the witness stand and sworn, testify in substance:

"That there is keen and active competition in the buying of their livestock; that they, and the members of their respective organizations, are treated fairly, and are not subjected to unfair trade practices, in connection with the selling by them and the buying by representatives of the defendant packers, and other packers and buyers, of their livestock; that they sell their stock, under competitive conditions, in the livestock market yards in the various sections of the country, and directly to packers at their private yards and to buyers engaged in direct marketing near places of production; that based upon their experience in the livestock industry each of said witnesses is of opinion that there is not and cannot be a monopoly of said industry; * * * that based upon the same experience each of said persons is of opinion that his industry would be benefited if the large meat packing companies were permitted to sell foodstuffs other than, and in addition to, meat food products, to the end that the cost of distributing meats and other livestock products might be shared by non-meat foodstuffs handled and distributed by the same persons, firms and corporations who engaged in the handling, distributing and selling of meats;" (R. 559-60).

The above evidence from livestock producers and their representatives throughout the country stands uncontradicted. We submit it should be conclusive in support of the following findings of fact:

"2. That there now exists in the meat packing industry in the United States active competition among a large number of individuals, firms and corporations, including defendants herein, in the purchase of livestock and in the selling of the products thereof." (R. 1110.)

"7. That none of the defendants has a monopoly in the meat packing industry." (R. 1111.)

In the opening statement of Counsel for the Government, it was conceded that, "the Court has jurisdiction, upon a proper showing, to modify the decree," entered February 27, 1920 (R. 389). At the same time it was stated, the intention of the Government was "to present to the Court every justifiable argument and *fact* which tends to the conclusion that the decree should not be modified." (R. 388.)

Obviously, those engaged in the raising of livestock, and the selling of such livestock, should be most apprehensive of any monopoly, or dangerous probability thereof, in the purchase and sale of the materials upon which they are wholly, or in large part, dependent for a livelihood. No section of the public would be affected as directly, and immediately, by such conditions as would the millions of farmers and ranchers throughout the country. The knowledge which livestock producers have of conditions surrounding the purchase and sale of their animals is not based upon theory, or indeed upon social, political or economic bias, but upon facts gained through experience. The courts have pointed out that trade competitors are the first to feel, and the keenest to condemn, monopolistic conditions in any industry. We insist that no less the producers of the raw materials of the meat packing industry would be the first to feel, and the keenest to condemn, monopolistic conditions in that industry. If facts are available to show the existence of a monopoly, or serious threat of monopoly, in the meat packing industry, they should be forthcoming from those who are vitally concerned in maintaining an open competitive market for their property which must be sold.

The reasoning of the Court in the case of United

States vs. Keystone Watch Case Co., 218 Fed. 502, 517, seems particularly applicable herein. The Court (Circuit Judges Buffington, Hunt and McPherson), in considering the action to be taken where neither the purpose, nor effect, of a course of action had as yet been shown to be definitely unlawful, said:

> "In that event the nature of things compels the court to enter the field of prophecy, or of probable anticipation. In such a situation, nothing else can be done. A court can only deal with the situations that are laid before it, and in the case supposed it must avail itself of whatever light may be had, and must exercise its best judgment with such aid as may be at hand. But if the suit be deferred until the lapse of time and the actual effect of the conduct complained of have permitted facts to accumulate and have tried the project in question by the test of experience, we can hardly doubt that prophecy or probable anticipation should be considered inferior in force to the evidence of what has actually taken place. In this world we must do our best with the means at our disposal. Even if prophets are always in danger of being discredited by the event, we are sometimes compelled to speculate about the future; and our duty then is to check our speculations as much as possible by taking account of such probabilities as may arise from past experience and observation. *In like manner, when we are face to face with what has actually happened, we may safely lay prophecy aside, in order to accept the services of a better guide, one that can be relied upon with a firmer confidence.*" (Italics ours.)

As a result of the trial herein, the Court below was no longer compelled "to enter the field of

prophecy, or probable anticipation,"—to base a decree upon fear of a future wrong,—to construe pleadings, denied or undenied. Evidence was presented under oath. Witnesses qualified by knowledge, and experience, testified as to conditions which actually prevailed in the marketing of livestock and sale of products thereof. Their evidence is as to facts which prove competition, and negative the allegations of the petition charging defendants with monopolistic control.

As this Court said in International Shoe Co. vs. Federal Trade Commission, 280 U. S. 291:

> "The existence of competition is a fact disclosed by observation rather than by the processes of logic;"

Attention is again called to the statement of the Court below that: *"The testimony is uncontradicted,* that the four present groups of defendants are independently owned and controlled, and are in active competition in the purchase and sale of livestock and the sale of meat products;" (R. 1044), and that, —"It is conceded that there is today no monopoly in the meat packing industry." (R. 1043.)

With the above statements as to existing competitive conditions fully supported by the record herein; with the prompt and nation wide dissemination by the Department of Agriculture of information to livestock producers, both as to livestock receipts and prices; with the supervision and regulation of seventy-two posted public livestock markets throughout the country, where 4461 registered market dealers and agencies (R. 408), handle the producers' livestock at rates and charges fixed and determined by the Secretary of Agriculture; with

packers' buying and selling transactions and practices supervised and controlled by the Secretary of Agriculture under the Packers and Stockyards Act, 1921; with producers cooperative sales agencies handling on these livestock markets a dollar volume of sales of livestock amounting to $302,894,984 in 1929 (R. 403);—we submit, the record conclusively disproves any charge of the existence, or dangerous probability, of a monopoly in the purchase of livestock.

B. The Record Herein Discloses the Improbability, if Not Indeed, the Impossibility of Any Food Monopoly by the Defendant Companies.

The term "monopoly" according to its legal meaning is defined as follows:

> "For one competitor to exclude all or substantially all other competitors from such opportunity,—*i. e.* drive them from the field of freely offering their goods, so as to have that field to himself—is to monopolize according to the legal and accurate sense of the word." * * *
> "It is never to be lost sight of that actually doing business, no matter how large, is not monopolizing. *It is excluding from the opportunity of doing business that is.*" Paterson vs. United States, 222 Fed. Rep. (Sixth Circuit) 599, 621, 625 (Italics ours).

The facts in the record completely disprove the existence of power in these defendant companies to exclude others from the production, manufacture, transportation, or distribution of foods.

As to production: In 1925 there were in the United States 6,371,640 farms (Pet. Ex. 31); in that year the gross income to farmers from crops

and animal products amounted to $12,051,520,000., and the cash income amounted to $10,160,415,000. (Pet. Ex. 32.) To mention only a few of these items, and consider at the same time the millions of people engaged in producing them, the vast areas of their production, the stupendous financial and other problems involved in the planting, growing, harvesting and marketing of these crops, is to show the utter absurdity of any fear of monopoly *in food production.* For example the estimated gross income from farm production in the United States for the years 1924-1928 was as follows upon the items mentioned below:

	1924	1925	1926	1927	1928
CROPS	(Value in thousands of dollars: *i. e.*, 000 omitted)				
Wheat	925,383	804,175	861,799	875,486	764,621
Rice	41,698	45,231	42,395	40,558	35,844
Potatoes, white	257,868	430,685	409,185	382,890	234,380
Sweet Potatoes	79,644	101,212	96,239	100,817	86,730
Truck crops	302,671	346,833	287,597	308,231	326,926
Peanuts	39,883	35,732	29,304	42,015	34,435
Apples	198,644	207,785	199,066	168,929	193,189
Peaches	65,713	62,506	64,667	49,164	60,253
Pears	25,888	28,196	21,508	23,569	23,503
Grapes	69,134	65,299	63,621	64,493	48,160
Cranberries	5,485	6,370	5,623	6,089	7,743
Strawberries	53,859	50,512	58,373	59,179	53,711
Other berries	28,109	28,311	32,615	36,857	31,881
Pecans	4,649	7,030	9,772	4,592	4,030
Oranges	91,338	89,864	104,082	118,313	142,285
Grapefruit	7,620	16,855	11,146	19,456	18,901
Other fruits	64,510	63,283	78,816	74,468	81,466
Other nuts	12,942	19,080	12,450	20,958	15,818
Maple syrup and sugar	9,283	7,629	9,802	9,166	7,526
Sugar beets	59,524	47,137	54,964	59,455	50,960
Sugar cane and syrup	24,341	29,525	20,376	19,855	20,786
Farm gardens	295,379	301,583	284,349	266,082	303,651
ANIMAL PRODUCTS					
Cattle and calves	921,682	1,002,954	1,010,030	1,005,770	1,124,474
Hogs	1,323,975	1,666,402	1,757,626	1,506,949	1,477,721
Sheep and lambs	133,966	152,612	155,876	150,962	171,463
Poultry (chickens)	390,991	408,088	445,631	449,314	457,464
Eggs	583,562	691,897	704,037	639,868	717,103
Milk	1,677,561	1,758,841	1,804,605	1,910,545	1,965,358

(Pet. Ex. 32, p. 373.)

It is a matter of common knowledge that the supplies, and stabilization of the prices, of coffee in Brazil, of sugar in Cuba, and various farm crops in the United States, have presented insuperable problems even where Governments have come to the financial aid of those engaged in production and marketing. These basic facts as to the production of foods must be given consideration in weighing the possibility of any monopoly in foods.

As to manufacture: The Census of Manufactures of the Department of Commerce for 1927, shows 49,787 separate establishments engaged in the manufacture of foods,—and these Census figures only include establishments producing foods having a factory value of $5,000. per annum, or more. (Pet. Ex. 1.) These establishments employed 679,520 wage earners; wages amounted to $823,388,000.; cost of materials $8,113,433,000. and value of products $11,015,860,000. Of such establishments, 33,244 were engaged in the manufacture of vegetable products having a total value of $6,210,130,000. (Pet. Ex. 1.) These figures relate only to wholesale values at point of manufacture, and do not include any part of the vast quantities of foods prepared in the homes such as canned fruits and vegetables, butter, cheese, and meats from farm slaughtered animals; and foods not requiring such preparation, as milk, eggs, fresh vegetables, and fruits.

It was stipulated (R. 574), that statistics available as to 241 companies in the food or food products industry show that in 1929 such companies had a net income of $445,061,209; that 134 of these companies reported their wholesale and retail sales volume for that year, and such sales amounted to

$6,210,736,048; and it may be noted, that while these figures as to net income and sales include the defendant companies, the combined net income of the latter amounted to less than 6¼ per cent of the total net income of the 241 food companies reporting; and further that these reports cover only 241 food manufacturers out of a total of 49,787 separate establishments engaged in the manufacture of foods.

In the findings of fact by the Court, it is stated:

> "11. That during the ten years, 1920 to 1930, food manufacturing and distributing concerns, other than defendants, have greatly grown in volume of business, financial strength, and earning power; that there has been a marked growth (a) in the integration of concerns dealing in various lines of foods into single manufacturing, selling and distributing organizations; (b) in the integration by food concerns in the handling of products from manufacturers to consumers; and (c) in the diversification of products handled by manufacturers, wholesalers and retailers; and the trend is toward further integration and diversification." (R. 1112.)

As to transportation: The utter impossibility of these defendants monopolizing the means of food transportation appears obvious. The railroad companies with all their trackage, facilities, equipment, and experience in transportation, are waging even now a losing battle to maintain their position against the thousands of motor truck lines covering the country. As pointed out in the record, surfaced roads in the United States have increased from 387,457 miles in 1921, to 662,435 miles in 1929.

Roads surfaced with concrete, asphalt, macadam, and similar materials have increased from 36,038 miles in 1921 to 112,454 miles in 1929. (R. 418.) The number of trucks in use in the United States increased from 979,904 in 1921, to 3,379,854, in 1929 (R. 418), and the number of freight refrigerator cars owned or controlled by railroads and private car companies increased greatly from 1920 to 1930. (Pet. Ex. 77.) Further, it was stipulated:

> "With reference to Petitioners' Exhibits 76 and 77, relating to refrigerator car equipment, it was stipulated that the supply of refrigerator cars in the United States, whether owned by the defendants or other meat packers, private car companies, or common carriers, is adequate to afford an ample supply of refrigerator cars at any time to any who need them and are in a position to use them." (R. 608.)

In the findings of fact by the Court it is stated:

> "17. That during the past ten years, (a) the increase in the number of railroad refrigerator cars, not owned by the defendants, available to all who need to use such equipment in their businesses, has resulted in there now being ample equipment of that character for any and all who need them; (b) the increase in the use of motor trucks for the transportation of food products and the extending of the areas of their operation by reason that the great increase i good roads, and the increase in the transporting by motor trucks of products by packers competing with defendants and by wholesale grocers in making deliveries to their customers, have combined to deprive defendants of any advantage which the ownership of refrigerator

cars formerly gave them, and none of the defendants enjoys any undue preference or advantage by reason of its ownership of refrigerator cars." (R. 1113.)

As to distribution: According to the best estimates available the total 1928 retail food bill of the United States was Twenty Four Billion Dollars, of which about Three Billion Dollars is the estimated value of products consumed at the place of production.

Among other sales outlets for foods there are at least 375,000 retail food stores (R. 773) excluding regular chain stores, and approximately 6,000 wholesale grocers located in 2,300 different cities. (Pet. Ex. 88.) It was stipulated that in 1920 there were 15,000 regular chain grocery stores in the United States having sales in that year of $770,000,000., and that by 1929 the number of stores had increased to 60,000 with sales of $3,500,000,000. (R. 567.) These 60,000 chain stores are operated by 900 separate corporations and the 70 largest of these corporations own 48,699 stores. (R. 567.) Further the record shows the existence of 551 voluntary chain grocery organizations with a total membership of 59,640 separate retail stores. (R. 510.)

It was strongly urged by all witnesses from the livestock industry, most of whom were officers of the great livestock associations of the country, that the Decree herein be modified so as to permit the defendant companies to retail meats and other food products. Such permission was denied and the injunctions of the Decree prohibit such action. It would appear unnecessary therefore to argue the possibility of any danger of a food monopoly by

these defendants through control of retail food distributive outlets.

The finding of fact by the Court below upon the change in conditions in the food industry since 1920, is as follows:

> "12. That since 1920 conditions have materially changed in the methods of marketing food products by reason of (a) a great increase in the number of regularly organized retail chain food store companies; (b) the grouping together for cooperative and concerted action of large numbers of wholesale and retail food establishments in what are called voluntary chains; (c) an increasing number of combination food wholesaling and retailing establishments with the resulting reduction in such single line establishments as grocery stores, vegetable and fruit stores, and meat markets; (d) the combining with grocery establishments of departments or markets for the selling of meats; and (e) the engaging by concerns retailing foods on large scale in the functions usual to wholesale and branch house distribution, and in the functions of manufacturing and processing meat products and other foods." (R. 1112.)

And the ultimate finding of fact by the Court below upon a review of the testimony of the witnesses and other evidence is:

> "13. That if defendants were to engage in handling food products additional to products they are now dealing in, there is no probability that they could or would acquire a monopoly of, or control the quantity and prices of, the foods produced and/or consumed in the United States." (R. 1112.)

Bearing in mind "the legal and accurate sense of the word monopolizing" (Patterson vs. United States, *supra*), we submit the facts in the record herein show conclusively the improbability, if not indeed the impossibility, of the defendants securing a monopoly either in producing, manufacturing, transporting, or distributing food products; that the fear of any future monopolistic control in any of these respects by the defendants herein is not based upon existing facts and conditions.

C. The Record Herein Proves that the Distributive Facilities, Equipment, and Organization of the Different Companies Can be Employed More Efficiently and Economically if Utilized for the Distribution of Food Products in Addition to Meats and Meat Food Products.

In the Statement of Evidence (R. 476), it is conceded that the following named witnesses testified as to conditons in the livestock industry over the past eight or ten years and,

> "That the existing conditions would be alleviated and livestock producers benefited if the large meat packers were permitted to handle at wholesale other food products in addition to meats, so that meat alone would not have to bear the entire cost of distribution." (R. 477.)

The witnesses, whose testimony, in part, was thus summarized, were as follows:

F. E. MOLLIN, Secretary, American National Livestock Association, Denver, Colorado. (R. 476.)

WAYLAND MAGEE, President of the County Farm

Bureau in Nebraska; President of the Nebraska Crop Growers Association; Director of the Federal Reserve Bank at Kansas City; Member of the Executive Board Nebraska Dairy Development Society; and Manager of a 1,280 Acre farm owned by his family, located near Bennington, Nebraska. (R. 478.)

WILLIAM H. TOMHAVE, Executive Secretary, American Aberdeen Angus Breeders' Association, author of "Meat and Meat Products", former professor of Animal Husbandry at Pennsylvania State College 1912-1925, and member of the National Livestock and Meat Board since 1926. (R. 479.)

MURDO MACKENZIE, Manager, Matador Land and Cattle Company, Ltd., which Company is engaged in the cattle business, operating ranches in Texas and Montana aggregating about 1,097,000 acres; owning approximately 54,000 cattle and 10,000 sheep; Mr. MacKenzie was for two years President of the Texas & Southwestern Cattle Raisers' Association, and is now an ex-officio member of its Board. (R. 480.)

J. F. WALKER, Secretary and Field Manager, Ohio Wool Growers Cooperative Association, Gambier, Ohio, an organization comprising about 8,000 sheep men in Ohio, Michigan and Indiana, and owning among them about 500,000 head of sheep; this Association handled about four million pounds of wool annually direct to the mills and is affiliated with the Ohio Livestock Shippers Association. (R. 480.)

W. F. RENK, Commissioner of Agriculture for the State of Wisconsin, Madison, Wisconsin; formerly President of the American Shropshire Associ-

ation, American Hampshire Sheep Association, Wisconsin Livestock Breeders Association, and now President of the Wisconsin Breeders and Sheep Feeders Association. (R. 481.)

JAMES TOD, Maple Hill, Kansas, owner of a four thousand acre ranch in Kansas, and a seventy thousand acre ranch in New Mexico, where he carries on the business of breeding and feeding livestock, marketing about fifteen hundred head annually. (R. 482.)

R. N. GUNN, Buckingham, Iowa, livestock farmer with about fifteen hundred acres of land in central Iowa; Chairman of the National Board on Swine Production Policy; Member of the Livestock Committee of the Federal Farm Board; Director of the Farm Bureau Federation in Iowa. (R. 484.)

W. J. FITTS, Gallatin, Tennessee, livestock farmer and President of the American Duroc Jersey Association; Director of the National Swine Growers Association. (R. 485.)

JAMES A. HOOPER, Salt Lake City, Utah, Secretary of the Utah Wool Growers Association and Manager of Austin Brothers Association, which concern handles about 25,000 sheep and 2,500 cattle on approximately 44,000 acres of grazing land and markets annually 10,000 to 15,000 sheep and 1,500 head of cattle. (R. 485.)

J. H. MERCER, Topeka, Kansas, Livestock Sanitary Commissioner of the State of Kansas; Secretary and General Manager of the Kansas Livestock Association; President of the National Livestock show at Wichita; Director of the American Royal Livestock show in Kansas City, Director of the National Livestock and Meat Board. Kansas Live-

stock Association embracing about 11,500 members who own approximately 80 per cent of the beef animal population and 65 per cent of the hogs and sheep in the State of Kansas. (R. 487.)

WINCHESTER P. WING, Secretary of the California Wool Growers Association, San Francisco, California. (R. 488.)

The defendant packing companies use refrigerator route cars in handling their perishable meats and meat food products. To obtain route car movement they must pay in certain territories a *minimum revenue on each car* equal to a minimum weight (usually 10,000 or 12,000 pounds) at L. C. L. rates for the distance covered. The record herein shows that the route cars used by the defendant companies in shipping their meats and perishable products are sent out, frequently, without sufficient load to make up the minimum weight; that consequently a penalty sufficient to make up the deficit must be borne by the meats and meat food products; that while freight charges at L. C. L. rates would have to be paid on grocery articles loaded in the route cars with the meats, the amount of such charges would reduce (by the amount thereof), the penalty now borne by the meats alone. The amount of freight paid on such grocery articles by the packer would be the same as the amount paid by a wholesale grocer.

Nevertheless, it is argued that it would not be *in the public interest* to remove the penalty charge freight burden, *borne by meat shipments alone,* and have such charge applied pro rata against grocery products occupying the unfilled space in the car.

That section of the public interest consisting of the livestock producers, is opposed to any such

wasteful handicap against distribution of livestock products, and insists that every handicap against the most economical marketing of either their animals or the products thereof should be promptly removed; that such action is necessary not only in their interest as producers but in the interest of the great consuming public. Those opposed urge that the Government not only countenance waste in distribution but insist upon its continuation. As was said by the Court below:

> "As to the peddler cars it is an extreme measure, unless absolutely necessary, to prevent anyone from making an economic use of his facilities. The use by the packers of vacant places in the peddler cars and in their warehouses, not used for meats, by other commodities is sound as an economic and business proposition." (R. 1057-58.)

The lack of opportunity or ability on the part of wholesale grocers to utilize refrigertor route cars in making shipments of grocery articles, is not an argument against affording packers full opportunity to do so where, as here, it is conceded that the supply of such cars is ample.

We repeat, the record shows (Petitioner's Exhibit 77), that the number of refrigerator cars owned by carriers and private car companies has greatly increased since 1920, and it was stipulated (R. 608), with reference to refrigerator cars, as follows:

> "That the supply of refrigerator cars in the United States, whether owned by the defendants or other meat packers, private car com-

panies, or common carriers, is adequate to afford an ample supply of refrigerator cars at any time to any who need them and are in a position to use them."

Obviously there can be no element of monopoly control as a result of the ownership or leasing of refrigerator cars by defendant companies, where the supply of such cars for use by others is ample, and refrigerator car service is available to all.

It cannot be denied that no unlawful transportation preferences or advantages accrue to the defendant packing companies, as shippers, through carriers permitting them to load meats and groceries in the same car.

In July, 1919, the National Wholesale Grocers' Association of the United States and the Southern Wholesale Grocers' Association, (now American Wholesale Grocers Association), filed complaints with the Interstate Commerce Commission wherein the Director General of railroads as Agent for various carriers was made respondent. In such complaints, Interveners herein demanded that respondent packing companies be forbidden to ship, in route cars, commodities which were not the products of slaughtered animals. In its decision upon such complaints, after extensive hearings, the Interstate Commerce Commission decided, under date of June 22nd, 1921, that:

"The complainants did not demand the discontinuance of the packers, peddlers, or branch house cars, but asked that the packers be forbidden to ship in such cars, commodities which are not the products of slaughtered animals. This demand, they say upon their brief, is the

issue between the packers and the wholesale grocers in this controversy, stated in one sentence."

* * * * * * * *

"Upon consideration of all the facts of record we find that the practices of defendants (railroad companies) in permitting the meat packers to load certain articles of groceries in their peddler and branch house cars is not shown to result in undue prejudice to complainants or unduly to prefer the packers." (62 I. C. C. Rep. 375.)

Further, the record shows that refrigerator route cars do not move either more rapidly or frequently than non-refrigertor cars; that such route cars operate on the regular published schedule of local freight trains on the lines of the carrier where used. (R. 675.)

Insofar as the exclusion of the defendant packing companies from handling grocery articles is based upon fear of monopoly arising from defendants ownership or use of refrigerator car transportation, the record herein conclusively establishes:

1. The supply of refrigerator cars is ample at all times to all who need them or can use them;
2. The authority of the Interstate Commerce Commission to regulate the use of such cars cannot be questioned;
3. The Interstate Commerce Commission has found, since the Decree herein was entered, that the defendant companies did not enjoy any undue proference through loading certain articles of groceries in their route cars along with meats;
4. No expedited movement is accorded such cars.

Surely it is not the policy of the Anti-Trust Laws to restrict competition through discrimination, and place upon one set of shippers a burden of unnecessary transportation expense which must be ultimately transmitted to the consumer of the manufactured product, or borne by the producer of the raw materials from which the product is manufactured.

The interests of the hundreds of thousands of livestock producers, and of the millions of consumers of meats require distribution from producer to consumer at the least cost. The theory is wholly unsound that a packer should not be allowed to fill unused space in a refrigerator car with grocery articles simply upon the ground that some competitor is not in a position to load and ship similar cars. And yet such is the theory of the Intervenors despite proof that a full supply of refrigerator cars is available to them, that the use thereof for hauling both meats and groceries in the same car is lawful, and that the movement thereof is no more rapid or frequent than the movement of other freight cars used by wholesale grocers in making less than car load shipments. We believe that, "jurisdiction of a court of equity is remedial, not punitive" (United States vs. American Can Company, 234 Fed. 1019), and the decision of the Court below upon this point will meet with full approval in this Court. We call attention particularly to the following findings of fact by the lower Court:

> "9. That each of the defendants could materially reduce the cost of distributing meats and other livestock products if it engaged in selling, dealing in and transporting foodstuffs other

than, and in addition to, meat food products." (R. 1111.)

"10. That each of the defendants, by dealing in foodstuffs other than, and in addition to, meat food products, would be enabled to so distribute its overhead and sales costs as to effect economies in the distribution of both meats and other livestock products and of non-meat-food products." (R. 1111.)

Neither of these findings of fact is questioned in any manner, by any of the Appellants, either in their Assignments of Error, or in their Statements of Points Relied Upon, presented to this Court.

IV.

CONCLUSION.

We therefore respectfully submit that modification of the Decree herein so that the defendant packing companies may utilize completely, and more efficiently, their distributive facilities is in the interests of the public and of benefit to the livestock producers of the country, and the order of the Court below should be affirmed.

Respectfully submitted,

DAYTON MOSES,
Counsel for the Texas and Southwestern Cattle Raisers' Association and the Kansas Livestock Association, as Amicus Curiae.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 568

UNITED STATES OF AMERICA,

vs.

SWIFT & COMPANY, ET AL.

No. 569

AMERICAN WHOLESALE GROCERS' ASSOCIATION,

vs.

SWIFT & COMPANY, ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION,

vs.

SWIFT & COMPANY, ET AL.

PETITION OF SWIFT & COMPANY AND ARMOUR & COMPANY FOR REHEARING.

FRANK J. HOGAN,
PAUL M. GODEHN,
HENRY VEEDER,
CHARLES J. FAULKNER, JR.,
Attorneys for Appellees.

BYNUM-WARREN PRINTING COMPANY, CHICAGO.

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UNITED STATES OF AMERICA,

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AMERICAN WHOLESALE GROCERS ASSOCIATION,

vs.

SWIFT & COMPANY, ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION,

vs.

SWIFT & COMPANY, ET AL.

PETITION OF SWIFT & COMPANY AND ARMOUR & COMPANY FOR REHEARING.

The Appellees, Swift & Company and Armour & Company, present this, their petition for rehearing of the above-entitled cause, and in support thereof, respectfully represent to the Court the following:

I.

THE DECISION OF THE COURT IS BASED UPON THE ERRONEOUS ASSUMPTION THAT THE RECORD CONTAINS EITHER PROOF OR AN ADMISSION OR AN ADJUDICATION OF VIOLATION OF LAW BY THE DEFENDANTS.

The 1920 bill of complaint charges the defendants with violations of the anti-trust laws. The defendants' answers specifically deny each and every such charge. No evidence in support of such charges was offered. No admission of the truth of such charges was made by any of the defendants. No inference of the existence of facts to support the charges of the bill of complaint can arise from the defendants' consent, because the stipulation, pursuant to which the decree was entered clearly prevents such an inference. The decree itself states in express terms that the defendants

> "have consented and do consent to the making and entry of the decree now about to be entered, without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission and the rendition or entry of said decree or the decree itself, shall not constitute or be considered an adjudication that the defendants, or any of them, have in fact violated any law of the United States." (R. 153)

The brief filed by the Government in this Court states at page 28:

> "We do not contend that any presumption of unlawful conduct by the defendants arises from the allegations of the bill or the charges of the Commission, but we refer to them in order to explain the purpose of and reasons for the prohibitions of the decree."

Notwithstanding the denials contained in the defendants' answers, the limitation contained in the stipulation, the condition embodied in the decree itself

and the view of the Government as to the legal effect of the allegations of the bill of complaint, the opinion of this Court assumes the truth of the charges set forth in the bill of complaint. Thus, the Court says that "size carries with it an opportunity for abuse that is not to be ignored when the opportunity is *proved* to have been utilized in the past," though there is no *proof* whatever in the record to substantiate the Court's statement that the defendants utilized their size for purposes of abuse in the past. The Court says that size and past aggressions induced the fear in 1920 that the defendants, if permitted to deal in groceries, would drive their rivals to the wall, and further says, "size and past aggressions leave the fear unmoved today," though there is no proof whatever of any past aggressions by the defendants. The Court says that if the defendants were permitted to deal in groceries, they would have the opportunity "to renew the war of extermination that they waged in years gone by," though there is no proof whatever that the defendants ever waged a war of extermination against anyone or that they ever put a single competitor out of business or that they ever had the power to do so.

The bill of complaint charges that the advantage derived from the defendants' distributing system was used "temporarily to fix prices so low as to gradually eliminate competition (R. 17). All of the defendants denied this charge in their answers (R. 43, 71, 96, 121, 142, 148), and some of them alleged affirmatively in their answers that the number of wholesale grocers and the volume of their business had substantially increased since 1918 (R. 71, 96), but the Court nevertheless assumed the truth of the charge of the bill of complaint by stating,

"Whether the defendants would resume that

> practice if they were permitted to deal in groceries again, we do not know."

The Court refers to "the old-time abuses in the sale of other foods," though there is no evidence of abuses by the defendants in the sale of foods. The Court summarizes its opinion by stating,

> "The case comes down to this: the defendants had abused their powers so grossly and persistently as to lead to the belief that even when they were acting separately, their conduct should be subjected to extraordinary restraints."

There is no evidence in the record proving or tending to prove this accusation or to justify the Court in stating that the composition of 1920 "will not lightly be undone at the suit of *the offenders.*"

The assumption of the truth of the charges of the 1920 petition cannot be justified on the ground that the truth of such charges must be assumed in order to sustain the decree. In *Swift & Company* v. *United States,* 276 U. S. 311, 327, this Court answered the contention that the decree was void because not supported by either proof or admission of facts, by stating,

> "The allegations of the bill not specifically denied may have afforded ample basis for a decree limited to future acts."

There are no charges of violation of law in the bill of complaint which were not specifically denied by each of the defendants, and an assumption of past misconduct by the defendants cannot possibly be justified by the allegations of the bill of complaint which were not specifically denied.

The purpose of and reasons for the decree can be ascertained only from the allegations of the bill of complaint because the decree contains no findings of fact. There is a radical difference, however, between a reference to the charges of the bill of complaint for such a

purpose and an assumption of the truth of the charges of the bill of complaint for the purpose of branding the defendants as law-breakers so that it may be said upon the basis of past misconduct that they cannot safely be entrusted with the privilege of trading in groceries.

We respectfully submit that this cause should be determined by considering the facts in the record relating to the packing industry and the food industry in 1920, as compared with the facts in the record as to the same industries in 1930. The undisputed proof of present-day conditions establishes beyond reasonable debate there is now no reason for an apprehension of a food monopoly, and that being true, relief should not be denied upon the basis of an unjustified assumption that the defendants have been law-violators and therefore will continue to be law-violators. *If it be true that a presumption of future violation of law arises from proof of past violation of law, no such presumption can arise on this record because it does not contain any proof of violation of law by any of the defendants. The decree itself provides that it shall not constitute or be considered as an admission or an adjudication that the defendants or any of them have in fact violated any law of the United States, and there is no proof in the record of the violation of any law of the United States by any of the defendants.*

There is no justification for assertions that the defendants violated the anti-trust laws prior to 1920. There was but one occasion prior to 1920 when there was an actual trial of the defendants on such a charge. An indictment was returned in 1910 in the United States District Court for the Northern District of Illinois, charging the defendants with violations of the anti-trust laws.

Pleas of not guilty were entered and a trial in 1912 resulted in an acquittal. (R. 67-8.)

The intervenens appreciated the advantage to be derived from arguing their cause upon a premise of past misconduct by the defendants, and realizing that there was no proof to justify such an accusation, sought to support their charges by means of reports of *ex parte* investigations of the defendant meat packers. Violation of law cannot be established by such evidence (*United States* v. *International Harvester Co.*, 274 U. S. 693, 703), nor can it be established by assuming the truth of charges made in 1920 which were specifically denied by all the defendants in a proceeding which culminated in a consent decree entered without findings of fact and upon the condition that the defendants' consents to the entry of the decree

> "shall not constitute or be considered an admission and the rendition or entry of said decree or the decree itself shall not constitute or be considered an adjudication that the defendants, or any of them, have in fact violated any law of the United States." (R. 153.)

This condition is just as much a part of the decree as any other part thereof, and is not subject to change by this Court. The opinion of this Court violates this condition of the decree by statements to the effect that the defendants have been guilty of violation of law. Such assumptions are repugnant to the agreement adopted by the court and embodied in the decree, upon which the defendants in the exercise of good faith were entitled to rely. (*United States* v. *International Harvester Co.*, 274 U. S. 693, 705.

II.

THE COURT HAS OVERLOOKED THE FACT THAT THE GOVERNMENT WAIVED ITS RIGHT TO MAINTAIN THAT THE CONSENT OF THE DEFENDANTS TO THE RESTRAINTS OF THE DECREE, SHOULD BE CONSIDERED IN GRANTING OR REFUSING MODIFICATION.

When petitions were filed for modification of the consent decree of 1920, the Government as a party to the decree, had a right to waive any advantage it derived from the fact that the decree of 1920 was entered by consent (*Hollins* v. *Brierfield Coal and Iron Co.*, 150 U. S. 371, 380), and at the beginning of the hearing it elected to do so and requested the court to ignore the fact that the decree had been entered by consent. The Attorney General of the United States advised the Chancellor,

> "I have taken the position that the decree, although entered by stipulation and consent, is a judicial decree to be dealt with as such." (R. 387-8)

After the evidence had been introduced in the lower court, the Government could have urged that because the 1920 decree was entered by consent, the evidence was not sufficient to require modification, or the Government could have been silent on this subject. It did not do either, but filed a brief with the lower court, stating in part,

> "The decree is a judicial decree and to be dealt with as such. The fact that it originated in a consent arrangement does not give any greater or less effect to the attitude of the Attorney General on the question of modification than if the decree was entered after litigation. The question whether there should be a modification is a judicial question to be decided on the law and the evidence. Arguments advanced for or against the application by any of the parties, including the Government, are to be weighed by the Court and given the same consideration, no more and no less, than they would if the decree had followed litigation." (R. 1042)

The lower court quoted this portion of the Government's brief in its opinion (R. 1042), and the opinion of the lower court in its entirety clearly shows that it relied upon the position taken by the Government by ignoring the fact that the decree of 1920 is a consent decree.

In reaching the conclusion that the decree appealed from should be reversed, this Court was apparently influenced to a marked degree by the fact that the decree of 1920 was entered by consent. The Court definitely upheld the power of a court of equity to modify an injunctive decree, although entered by consent, but in considering the question whether the proof justified the exercise of the power, the Court applied a more exacting rule of law than is applicable to injunctions entered over opposition. The Court's opinion states that the defendants, controlled by experienced business men, renounced the privilege of trading in groceries "with their eyes open," and that the defendants should be left where they are found, "especially since the place where we find them is the one where they agreed to be." The Court then stated that in order to obtain modification of the decree, the burden was upon the defendants to make a "clear" showing of "grevious wrong" due to "unforeseen conditions." The language of the Court is,

> "Nothing less than a clear showing of grevious wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

Such a test has never been applied in any decision involving modification of an injunctive decree entered over opposition. The petitioner for modification in *Ladner* v. *Siegel,* 298 Pa. 487, was not required to make a "clear" showing of "grevious wrong" or to prove that when the injunction involved in that case was entered in the year 1927, he did not foresee or could not reasonably have been expected to foresee that an increase in

the use of the automobile as a means of transportation would create a necessity for garages in residential districts. Such a test should not be applied to an anti-trust decree. Anti-trust decrees are remedial, not punitive (*United States* v. *American Can Company*, 234 Fed. 1019) and the public interest should be the paramount consideration in such cases (*United States* v. *United States Steel Corporation*, 251 U. S. 417, 457).

The Court's opinion further emphasizes and relies upon the consent of the defendants to the entry of 1920 decree by stating,

> "Wisely or unwisely, they submitted to these restraints upon the exercise of powers that would normally be theirs. They chose to renounce what they might otherwise have claimed, and the decree of the Court confirmed the renunciation and placed it beyond recall. What was then solemnly adjudged as a final composition of an historical litigation will not lightly be undone at the suit of the offenders and the composition held for nothing."

We respectfully submit that in relying upon the defendants' consent to the decree of 1920 as a reason for reversal, the Court overlooked the Government's waiver of its right to maintain that such consent to the restraints of the decree should be considered in granting or refusing modification. The Attorney General as the representative of all branches of the public, properly took the position in the lower court that the court's decision should be based upon considerations of the conflicting public interests and not upon the question of whether the defendants were wise or foolish in 1920, or whether they did or did not foresee the changes that were to come in the meat-packing and food industry. The Attorney General informed the lower court that

> "because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the court" (R. 388).

A decision on the merits has not been rendered because the Court's opinion is based in part upon the fact that the defendant meat packers are in the unfortunate position they now occupy because they agreed to be there in 1920. This criticism of the Court's opinion cannot be answered by stating that the Court is not bound to observe the desire of the parties as to the basis of a decision. If the evidence introduced in the lower court was sufficient to require modification of an injunctive decree entered over opposition, but was not sufficient to require modification of an injunctive decree entered by consent, the Government, at the conclusion of the evidence, had a valid defense to the petitions for modification. The Court said in *Hollins* v. *Brierfield Coal and Iron Co.*, 150 U. S. 371, at page 380:

> "Defenses existing in equity suits may be waived, just as they may in law actions, and when waived, the cases stand as though the objection never existed. Given a suit in which there is jurisdiction of the parties in a matter within the general scope of the jurisdiction of courts of equity, and a decree rendered will be binding, although it may be apparent that defenses existed which if presented would have resulted in a decree of dismissal."

This is not a case of a failure to present a defense, but of a waiver of a defense. The Government said,

> "Arguments advanced for or against the application by any of the parties, including the Government, are to be weighed by the Court and given the same consideration, no more and no less, than they would if the decree had followed litigation." (R. 1042)

The trial court acted upon the Government's waiver and quoted this portion of the Government's brief in its opinion and we respectfully submit that this Court erred in basing its decision in part on the fact that the 1920 decree was entered by consent instead of over opposition.

III.

IN CONSIDERING THE USE OF DEFENDANTS' DISTRIBUTING SYSTEMS IN HANDLING GROCERIES, THE COURT MISAPPREHENDED THE ALLEGATIONS OF THE ORIGINAL BILL OF COMPLAINT AND OVERLOOKED CHANGES WHICH HAVE OCCURRED IN THE FOOD INDUSTRY SINCE 1920.

The Court's opinion states that "two reasons and only two" were given by the bill of complaint of 1920 for requesting that the defendants be prohibited from dealing in groceries, namely, the ability of the defendants to distribute substitute foods without a comparative increase in overhead, and the alleged ability or practice of the defendants to fix prices for groceries so low over temporary periods of time as to gradually eliminate competition. The Court then says, "whatever persuasiveness the reasons then had, is theirs with undiminished force to-day," and concludes that there has been no change in the conditions which existed in 1920.

The paragraph of the bill of complaint referred to by the Court (R. 17) alleges that the defendants had acquired a monopoly of certain substitute foods, and that this had been accomplished by the use of the defendants' distributing facilities for such substitute foods with comparatively no increase of overhead, and by employing this advantage to fix prices so low over temporary periods of time as to eliminate competition (R. 17). Having thus explained what the defendants had done and the methods employed by them, in the view of the Government, the reason for the prohibition against the sale of groceries by the defendants was stated in the bill of complaint as follows:

> "These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New

fields are gradually being invaded, and unless prevented by a decree of this Court, the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table." (R. 17)

We respectfully submit that the reason stated by the Government for the restraint against the sale of groceries is found in the quoted paragraph of the bill of complaint. The Government did not ask that the defendants be prohibited from selling groceries merely because they could transport them without a comparative increase in overhead, but because the Government believed that the defendants were acquiring a monopoly and were about to perfect it as to every article of food. That reason for prohibiting the sale of groceries no longer exists. A monopoly in the food industry cannot now be acquired. The lower court so found (R. 1112), and there is no evidence in the record to the contrary.

If, however, we assume that the reasons for the prohibition against the sale of groceries were that the defendants could transport groceries without a comparative increase in overhead and that this advantage in 1920 enabled the defendants to fix prices of groceries so low as to eliminate competition, it does not follow as stated by the Court that the reasons have the same persuasiveness today as in 1920. The defendants admitted in their answers that they could handle groceries through their distributing facilities without a corresponding increase in overhead (R. 43, 69, 95-6, 121, 142 and 148), and denied that this enabled them to fix prices so low as to eliminate competition (R. 43, 71, 96, 121, 142 and 148). The record shows that at the present time the defendants could handle groceries without a corresponding increase in overhead. That fact exists now as it did in 1920. The defendants admitted it to be true in 1920 and proved it

to be true in 1930. However, there remains for consideration the controlling question of whether this ability of the defendants to handle groceries without a corresponding increase in overhead could be used by the defendants under present-day conditions in the food industry to crush competitors and acquire a monopoly. The undisputed evidence and the lower court's findings of fact negative any such conclusion.

There is a sharp distinction between an ability to do a wholesale grocery business without a relative increase in overhead charges and an ability to do such business at less expense than competitors. If the defendants engage in the wholesale grocery business they will have to pay the same transportation charges on groceries as their competitors, and the defendants' grocery business will have to carry its part of overhead expenses. The record does not bear out the assumption that these expenses would be less than the expenses of competitors. Economies would be effected, not by doing business more cheaply than competitors, as the Court seems to think, but by distributing overhead expenses over a larger volume of business.

Under present conditions it is necessary for the defendants to diversify their business in order to maintain the volume required for the operation of branch houses and car routes. The meat business alone under conditions of to-day is not sufficient for that purpose. The constantly increasing overhead is too heavy. (R. 655-6, 958a, 960, 666-70). It must be distributed over a larger volume in order to effect the necessary economies for continued operation of branch houses and car routes. Modification was granted by the lower court to enable the defendants to make this necessary distribution of overhead expenses (finding of fact number 10, R. 1111). The theory of the decision of the lower court was that

changed conditions demanded relief for the defendants which should be granted, unless there was danger of monoply (R. 1056-7). The court saw no danger of monopoly, (R. 1058) and so found as a fact (R. 1112).

IV.

THE OPINION OF THE COURT ASSUMES, CONTRARY TO THE RECORD, THAT THE ORIGINAL DECREE WAS INTENDED TO PROTECT THE INTERESTS OF CERTAIN CLASSES INSTEAD OF THE INTERESTS OF THE PUBLIC AS A WHOLE.

The injunction against the sale of groceries by the defendants restrains and lessens competition in an essential industry. The Court says in its opinion that the question in this cause is whether this restraint can be removed "without prejudice to the interests of the classes whom this particular restraint was intended to protect."

We respectfully submit that the controlling question in this cause is not whether the restraint against the sale of groceries can be removed without prejudice to the wholesale grocers, but whether it can be removed without thereby incurring danger of a food monopoly. The restraint was not imposed for the sole protection of the wholesale grocers. It was imposed, in the language of the bill of complaint, to prevent the defendants from controlling "the quantity and price of each article of food found on the American table" (R. 17). Such a result would have been detrimental not alone to the wholesale grocers, but to the entire consuming public. The wholesale grocers are naturally gratified by the present situation which curtails the competition which would normally exist in their business. The injunctive decree did not create a right in the wholesale grocers nor in anyone else. It only granted a protection (*Ladner* v. *Siegel*,

298 Pa. 487), and that protection was granted to the entire public in the form of an unprecedented restraint contrary to the theory of our anti-trust laws, because the Government believed that such action was necessary under 1920 conditions to prevent a food monopoly. The evidence and the lower court's findings establish beyond dispute that the removal of the restraint would not result in a food monopoly.

V.

THE COURT'S OPINION IGNORES THE EVIDENCE AND THE FINDINGS OF FACT TO THE EFFECT THAT A FOOD MONOPOLY IS NOT POSSIBLE.

The bill of complaint of 1920 alleges the existence of a meat monopoly between five corporations. The record shows by proof and by the admission of the government that no such monopoly exists. The record further shows that since 1920 the defendant corporations have sustained large operating losses and have been through a bankruptcy, a forced sale and refinancing. The four corporations which have survived are still of great size from the standpoint of volume of sales but their earning power is less than that of their competitors and far less than that of the large chain organizations and food manufacturing companies which have developed during the last decade.

The four defendants are in active competition with each other and are permanently enjoined from acting in concert. The Court in its opinion admits that the defendants "now compete with one another" and this fact was likewise admitted by the Government (R. 558) and found by the lower court (R. 1111). Yet in the same paragraph of its opinion this Court proceeds to compare the combined sales of all the

defendants with those of their thirteen chief competitors in order to show that "the defendants if permitted to deal in groceries would drive their rivals to the wall". But if, as is admitted, the defendants are in competition with one another, then the sales of each should be contrasted with the sales of all other packers, including the other defendants. In such case the sales of one of the largest defendants would be $1,000,000,000.00 and the sales of its sixteen chief competitors would be $1,907,000,000.00. The sales of the largest defendant thus amount to less than 35 per cent of the sales of seventeen packers selected out of a total of 998 packers under federal inspection (R. 733) and the large number of additional packers engaged solely in intrastate commerce.

The undisputed and admitted facts that each defendant is in active and keen competition with each and all of the others, and that the defendants are now under the supervision of the Secretary of Agriculture and are perpetually enjoined from acting in concert, are of themselves sufficient to prevent the strangling of competitors and the monopolizing of the market either for meat foods or groceries. It is difficult to appreciate how Swift & Company could acquire a monopoly in groceries, with Armour, Cudahy and Wilson in the field as competitors, to say nothing of the further competition to be supplied by six thousand wholesale grocers and the financially powerful chain organizations and food manufacturers. The record shows by uncontradicted evidence that a monopoly in the food industry cannot be achieved by anyone under present conditions, and the lower court so found as a fact (R. 1112). The only reason for the restraint on the sale of groceries having been removed, the public interest requires that normal competition in the food industry be restored. "Our consideration should be of, not what the corporation had power to do or did,

but what it has now power to do and is doing." (*United States* v. *United States Steel Corporation*, 251 U. S. 417, 444.) If the occasion should arise in the future, commerce can be protected by the restoration of the modified provisions of the decree under paragraph eighteenth thereof.

Three members of this Court took no part in the decision of this case. Four of the justices of this Court are of the opinion that the decree appealed from should be reversed and two justices are of the opinion that it should be affirmed. The vital importance of the case, not alone to the defendants, but also to conflicting public interests, justifies a rehearing.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the decree of the Supreme Court of the District of Columbia, be, upon further consideration affirmed.

Respectfully submitted,

FRANK J. HOGAN
PAUL M. GODEHN
HENRY VEEDER
CHARLES J. FAULKNER JR.
Attorneys for Swift & Company, et al. and Armour & Company, et al.

CERTIFICATE OF COUNSEL.

The undersigned counsel for the above named Swift & Company, *et al.* and Armour & Company, *et al.*, DO HEREBY CERTIFY that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

FRANK J. HOGAN,
PAUL M. GODEHN,
HENRY VEEDER,
CHARLES J. FAULKNER, JR.,
Attorneys for Swift & Company, et al., and Armour & Company, et al.

SUPREME COURT OF THE UNITED STATES.

Nos. 568, 569 and 570.—October Term, 1931.

568	The United States of America, Appellant, *vs.* Swift & Company, et al.	On Appeal from the Supreme Court of the District of Columbia.
569	American Wholesale Grocers Association, et al., Appellants, *vs.* Swift & Company, et al.	
570	National Wholesale Grocers Association, Appellant, *vs.* Swift & Company, et al.	

[May 2, 1932.]

Mr. Justice Cardozo delivered the opinion of the Court.

A decree of the Supreme Court of the District of Columbia has modified an earlier decree of the same court which enjoined the continuance of a combination in restraint of trade and commerce. Separate appeals, one by the United States of America, and the others by associations of wholesale grocers intervening by leave of court, have brought the case here (Judicial Code, § 238; U. S. Code, Title 28, § 345).

In February, 1920, a bill was filed by the Government under section 4 of the Act of July 2, 1890 (c. 647, 26 Stat. 209, U. S. Code, Title 15), known as the Sherman anti-trust act, against the five leading meat-packers in the United States to dissolve a monopoly. The packers joined as defendants were Swift & Company, Armour & Company, Wilson & Company, the Morris Packing Company, and the Cudahy Packing Company, together with their subsidiaries and also their chief officers. The charge was that by concert of action the defendants had succeeded in sup-

pressing competition both in the purchase of live stock and in the sale of dressed meats, and were even spreading their monopoly into other fields of trade. They had attained this evil eminence through agreements apportioning the percentages of live stock to which the members of the combinations were severally entitled; through the acquisition and control of stockyards and stockyard terminal railroads; through the purchase of trade papers and journals whereby cattle raisers were deprived of accurate and unbiased reports of the demand for live stock; and through other devices directed to unified control. "Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected" from what was characterized as "substitute foods." To that end, so it was charged, they had set about controlling the supply of "fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese and other substitute foods ordinarily handled by wholesale grocers or produce dealers." Through their ownership of refrigerator cars and branch houses as well as other facilities, they were in a position to distribute "substitute foods and other unrelated commodities" with substantially no increase of overhead. Whenever these advantages were inadequate, they had recourse to the expedient of fixing prices so low over temporary periods of time as to eliminate competition by rivals less favorably situated. Through these and other devices there came about in the view of the Government an unlawful monopoly of a large part of the food supply of the nation. The prayer was for an injunction appropriate to the case exhibited by the bill.

The defendants consented to dismemberment, though answering the bill and traversing its charges. With their answer there was filed a stipulation which provided for the entry of a decree upon the terms therein set forth and provided also that the decree "shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States." The decree entered on February 27, 1920, enjoined the defendants from maintaining a monopoly and from entering into or continuing any combination in restraint of trade and commerce. In addition they were enjoined both severally and jointly from (1) holding any interest in public stockyard companies, stockyard terminal railroads or market newspapers, (2)

engaging in, or holding any interest in, the business of manufacturing, selling or transporting any of 114 enumerated food products, (principally fish, vegetables, fruit and groceries), and thirty other articles unrelated to the meat packing industry; (3) using or permitting others to use their distributive facilities for the handling of any of these enumerated articles, (4) selling meat at retail, (5) holding any interest in any public cold storage plant, and (6) selling fresh milk or cream. No injunction was granted in respect of the sale or distribution of poultry, butter, cheese and eggs, though these had been included in the bill among the substitute foods which the defendants were seeking to engross. The decree closed with a provision whereby jurisdiction of the cause was retained for the purpose of taking such other action or adding at the foot such other relief "as may become necessary or appropriate for the carrying out and enforcement" thereof, "and for the purpose of entertaining at any time hereafter any application which the parties may make" with reference thereto.

The expectation would have been reasonable that a decree entered upon consent would be accepted by the defendants and by those allied with them as a definitive adjudication setting controversy at rest. The events that were to follow recount a different tale. In April, 1922, the California Co-operative Canneries Corporation filed an intervening petition alleging that the effect of the injunction was to interfere with the performance by Armour & Company of a contract by which Armour had agreed to buy large quantities of California canned fruit, and praying that the decree be vacated for lack of jurisdiction. Leave to intervene was granted by the Court of Appeals of the District, which ordered "that such further proceedings thereupon be had as are necessary to determine the issue raised." In November, 1924, motions for like relief were made by Swift and by Armour, their subsidiaries and officers. The motions were denied by the Supreme Court of the District, and thereafter were considered by this court, which upheld the consent decree in the face of a vigorous assault. *Swift & Co.* v. *United States*, 276 U. S. 311. In the meantime, however, an order had been made on May 1, 1925, by the Supreme Court of the District at the instance of the California Canneries whereby the operation of the decree as a whole was suspended "until further order of the court to be made, if at all, after a full hear-

ing on the merits according to the usual course of chancery proceedings" (see *United States* v. *California Canneries*, 279 U. S. 553, 555). This order of suspension remained in force till May, 1929, when a decision of this court swept the obstacle aside. *United States* v. *California Canneries, supra.*

The defendants and their allies had thus been thwarted in the attempt to invalidate the decree as of the date of its entry, and again the expectation would have been reasonable that there would be acquiescence in its restraints. Once more the expectation was belied by the event. The defendants, or some of them, discovered as they thought that during the years that had intervened between the entry of the decree and its final confirmation, conditions in the packing industry and in the sale of groceries and other foods had been transformed so completely that the restraints of the injunction, however appropriate and just in February, 1920, were now useless and oppressive. The discovery or supposed discovery had its fruit in the proceeding now before us. On April 12, 1930, the defendants Swift & Company and Armour & Company and their subsidiaries, being no longer under the shelter of an order suspending the injunction, filed a petition to modify the consent decree and to adapt its restraints to the needs of a new day. The prayer was that the petitioners be permitted (1) to own and operate retail meat markets; (2) to own stock in stockyard companies and terminal railroads; (3) to manufacture, sell and deal in the 144 articles specified in paragraph fourth of the decree, which for convenience will be spoken of as "groceries;" (4) to use or permit others to use their distributive facilities in handling such commodities; and one of the defendants, Swift & Company, asked in addition that the defendants be permitted to hold interests in public cold-storage warehouses and to sell fresh milk and cream. Of the five defendants named in the original suit, one, Morris & Company, sold out to Armour & Company in 1923, and discontinued business. The two other defendants, Wilson and Cudahy, did not join in the petition to modify the decree, but stated in open court that they would consent to such modification as the court might order provided it be made applicable to the defendants equally. All the requests for modification were denied except numbers 3 and 4, of which 4 is merely ancillary to 3 and calls for no separate consideration. The modification in respect of

number 3 gave permission to deal at wholesale in groceries and other enumerated commodities, but maintained the injunction against dealing in them at retail. In every other respect, the decree of February 27, 1920, was continued in force as originally entered. The modifying decree, which was entered January 31, 1931, is the subject of this appeal.

We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent. The power is conceded by the Government, and is challenged by the interveners only. We do not go into the question whether the intervention was so limited in scope and purpose as to withdraw this ground of challenge, if otherwise available. Standing to make the objection may be assumed, and the result will not be changed. Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. *Ladner* v. *Siegel,* 298 Pa. St. 487, 494, 495; *Emergency Hospital* v. *Stevens,* 146 Md. 159; *Larson* v. *Minn. N. Electric Ry. Co.,* 136 Minn. 423; *Lowe* v. *Prospect Hill Cemetery Assn.,* 75 Neb. 85. The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative (*Ladner* v. *Siegel, supra*). The result is all one whether the decree has been entered after litigation or by consent (*American Press Assn.* v. *United States,* 245 Fed. 91). In either event, a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong. We reject the argument for the interveners that a decree entered upon consent is to be treated as a contract and not as a judicial act. A different view would not help them, for they were not parties to the contract, if any there was. All the parties to the consent decree concede the jurisdiction of the court to change it. The interveners gain nothing from the fact that the decree was a contract as to others, if it was not one as to them. But in

truth what was then adjudged was not a contract as to any one. The consent is to be read as directed toward events as they then were. It was not an abandonment of the right to exact revision in the future, if revision should become necessary in adaptation to events to be.

Power to modify existing, we are brought to the question whether enough has been shown to justify its exercise.

The defendants, controlled by experienced business men, renounced the privilege of trading in groceries, whether in concert or independently, and did this with their eyes open. Two reasons, and only two, for exacting the surrender of this adjunct of the business were stated in the bill of complaint. Whatever persuasiveness the reasons then had, is theirs with undiminished force today.

The first was that through the ownership of refrigerator cars and branch houses as well as other facilities, the defendants were in a position to distribute substitute foods and other unrelated commodities with substantially no increase of overhead. There is no doubt that they are equally in that position now. Their capacity to make such distribution cheaply by reason of their existing facilities is one of the chief reasons why the sale of groceries has been permitted by the modified decree, and this in the face of the fact that it is also one of the chief reasons why the decree as originally entered took the privilege away.

The second reason stated in the bill of complaint is the practice followed by the defendants of fixing prices for groceries so low over temporary periods of time as to eliminate competition by rivals less favorably situated.

Whether the defendants would resume that practice if they were to deal in groceries again, we do not know. They would certainly have the temptation to resume it. Their low overhead and their gigantic size, even when they are viewed as separate units, would still put them in a position to starve out weaker rivals. Mere size, according to the holdings of this court, is not an offense against the Sherman act unless magnified to the point at which it amounts to a monopoly (*United States* v. *United States Steel Corp.*, 251 U. S. 417; *United States* v. *International Harvester Co.*, 274 U. S. 693, 708), but size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past. The original decree at all events was framed upon that theory. It was framed upon the theory that even after the combination among the packers had been broken up and the

monopoly dissolved, the individual units would be so huge that the capacity to engage in other forms of business as adjuncts to the sale of meats should be taken from them altogether. It did not say that the privilege to deal in groceries should be withdrawn for a limited time, or until the combination in respect of meats had been effectually broken up. It said that the privilege should be renounced forever, and this whether the units within the combination were acting collectively or singly. The combination was to be disintegrated, but relief was not to stop with that. To curb the aggressions of the huge units that would remain, there was to be a check upon their power, even though acting independently, to wage a war of extermination against dealers weaker than themselves. We do not turn aside to inquire whether some of these restraints upon separate as distinguished from joint action could have been opposed with success if the defendants had offered opposition. Instead, they chose to consent, and the injunction, right or wrong, became the judgment of the court. Groceries and other enumerated articles they were not to sell at all, either by wholesale or by retail. Even the things that they were free to sell, meats and meat products, they were not to sell by retail. The court below annulled the restraint upon sales of groceries by wholesale, but retained the prohibition in respect of sale by retail both for groceries and for meats. The one prohibition equally with the other was directed against abuse of power by the individual units after the monopoly was over; and the death of the monopoly, the breaking up of the combination, if an adequate reason for terminating one of them, is an adequate reason for terminating both.

We have said that the defendants are still in a position, even when acting separately, to starve out weaker rivals, or at least that the fear of such abuses, if rational in 1920, is still rational today. The meat monopoly has been broken, for the members now compete with one another. The size of the component units is substantially unchanged. In 1929, the latest year for which any figures are furnished by the record, the sales made by Swift and Armour, each, amounted to over a billion dollars; those made by all the defendants together to over $2,500,000,000; and those made by their thirteen chief competitors to only $407,000,000. Size and past aggressions induced the fear in 1920 that the defendants, if permitted to deal in groceries, would drive their rivals to the wall. Size and past aggressions leave the fear unmoved

today. Changes there have been that reduce the likelihood of a monopoly in the business of the sale of meats, but none that bear significantly upon the old-time abuses in the sale of other foods. The question is not whether a modification as to groceries can be made without prejudice to the interests of producers of cattle on the hoof. The question is whether it can be made without prejudice to the interests of the classes whom this particular restraint was intended to protect. Much is made in the defendants' argument of the rise of the chain stores to affluence and power, and especially of chains for the sale of groceries and other foods. Nothing in that development eradicates the ancient peril. Few of the chain stores produce the foods they have for sale, and then chiefly in special lines. Much, indeed most, of what they offer, they are constrained to buy from others. They look to the defendants for their meats, and if the ban of this decree is lifted, they will look to the defendants for other things as well. Meats and groceries today are retailed at the same shops, departments of a single business. The defendants, the largest packers in the country, will thus hold a post of vantage, as compared with other wholesale grocers, in their dealings with the chains. They will hold a post of vantage in their dealings with others outside the chains. When they add groceries to meats, they will do so, they assure us, with substantially no increase of the existing overhead. Thus in the race of competition they will be able by their own admission to lay a handicap on rivals overweighted at the start. The opportunity will be theirs to renew the war of extermination that they waged in years gone by.

Sporadic instances of unfair practices even in the meat business are stated in the findings to have occurred since the monopoly was broken, practices as to which the defendants' officers disclaim responsibility or knowledge. It is easy to make such excuses with plausibility when a business is so huge. They become less plausible when the size of the business is moderate. Responsibility is then centered in a few. If the grocery business is added to the meat business, there may be many instances of unfair pressure upon retailers and others with the design of forcing them to buy from the defendants and not from rival grocers. Such at any rate was the rationale of the decree of 1920. Its restraints, whether just or excessive, were born of that fear. The difficulty of ferreting out these evils and repressing them when discovered supplies an

additional reason why we should leave the defendants where we find them, especially since the place where we find them is the one where they agreed to be.

There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.

The case comes down to this: the defendants had abused their powers so grossly and persistently as to lead to the belief that even when they were acting separately, their conduct should be subjected to extraordinary restraints. There was the fear that even when so acting they would still be ready and able to crush their feebler rivals in the sale of groceries and kindred products by forms of competition too ruthless and oppressive to be accepted as fair and just. Wisely or unwisely, they submitted to these restraints upon the exercise of powers that would normally be theirs. They chose to renounce what they might otherwise have claimed, and the decree of a court confirmed the renunciation and placed it beyond recall.

What was then solemnly adjudged as a final composition of an historic litigation will not lightly be undone at the suit of the offenders, and the composition held for nothing.

The decree should be reversed and the petitions dismissed.

The CHIEF Justice, Mr. Justice SUTHERLAND and Mr. Justice STONE took no part in the consideration and decision of this case.

SUPREME COURT OF THE UNITED STATES.

Nos. 568, 569 and 570.—October Term, 1931.

568	The United States of America, Appellant, *vs.* Swift & Company, et al.	On Appeal from the Supreme Court of the District of Columbia.
569	American Wholesale Grocers Association, et al., Appellants, *vs.* Swift & Company, et al.	
570	National Wholesale Grocers Association, Appellant, *vs.* Swift & Company, et al.	

[May 2, 1932.]

Mr. Justice Butler, dissenting.

The facts on which the District supreme court allowed modification of parts of the 1920 consent injunction are set forth in its findings prepared in accordance with Equity Rule 70½. They are discussed and amplified in a painstaking opinion contained in the record. I think they are sustained by the evidence and are sufficient to support the decree.

Conditions affecting competition in the lines of business carried on by defendants have changed since 1920. Indeed the Government, after the introduction of evidence by appellees, formally stipulated that they "are in active competition with each other" etc.[1] The facts negative any suggestion that danger of monopo-

[1]Census figures in respect of slaughtering and meat packing establishments in 1921 and 1927 are as follows:

Value of Production per Year	1921	1927
$5,000 to $20,000	142	64
$20,000 to $100,000	304	267
$100,000 to $500,000	360	429
$500,000 to $1,000,000	112	163
$1,000,000 and over	266	327
Total	1184	1250

The relation between each of the defendant packers' production of meat

listic control now exists. Each of the principal packers has suffered discouraging operating losses. One of them, retiring from business, sold its plants to another. The purchaser, in order to avoid failure, was compelled to refinance and has not earned reasonable profits in any year. Another, being embarrassed, passed into the hands of a receiver, was subsequently adjudged bankrupt and later re-organized. Only two have continued able to sustain themselves. It is shown without dispute that defendants' earnings, whether considered in relation to sales or to the worth of property invested, are low and substantially less than those of others carrying on the same lines of business.[2]

Since 1920 the manufacture and distribution of food have grown greatly and to a large extent have come to be carried on by integrated concerns in strong hands, which have taken over and are handling many products from the sources of production to consumers. More and more, meat—formerly distributed through shops selling little if anything else—is sold in stores carrying groceries and other articles of food. The diversification of the business of defendants permitted by the modification of the in-

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and lard and total production of these articles in the United States during the years 1920 and 1929 are as follows:

	1920	1929
Swift	13.2%	15.2%
Armour (including Morris)	15.8%	14.1%
Wilson	5.2%	4.3%
Cudahy	4.0%	4.7%

[2]The following table groups the defendants' earnings and compares them with the combined earnings of 15 competitors from 1920 to 1929:

Year	*Percentage of Defendants' Earnings on Sales*	*Percentage of Competitors' Earnings on Sales*	*Percentage of Defendants' Earnings on Net Worth*	*Percentage of Competitors' Earnings on Net Worth*
1920	.18	.76	.88	2.48
1921	3.05 (Loss)	.17 (Loss)	10.27 (Loss)	5.80 (Loss)
1922	.10	2.72	.35	10.87
1923	1.58	3.40	5.65	12.00
1924	1.77	3.39	6.46	13.28
1925	1.44	2.03	5.32	9.11
1926	1.35	2.65	5.03	12.24
1927	.63	2.07	2.49	9.83
1928	1.24	3.17	5.13	14.10
1929	1.06	2.68	4.55	14.02

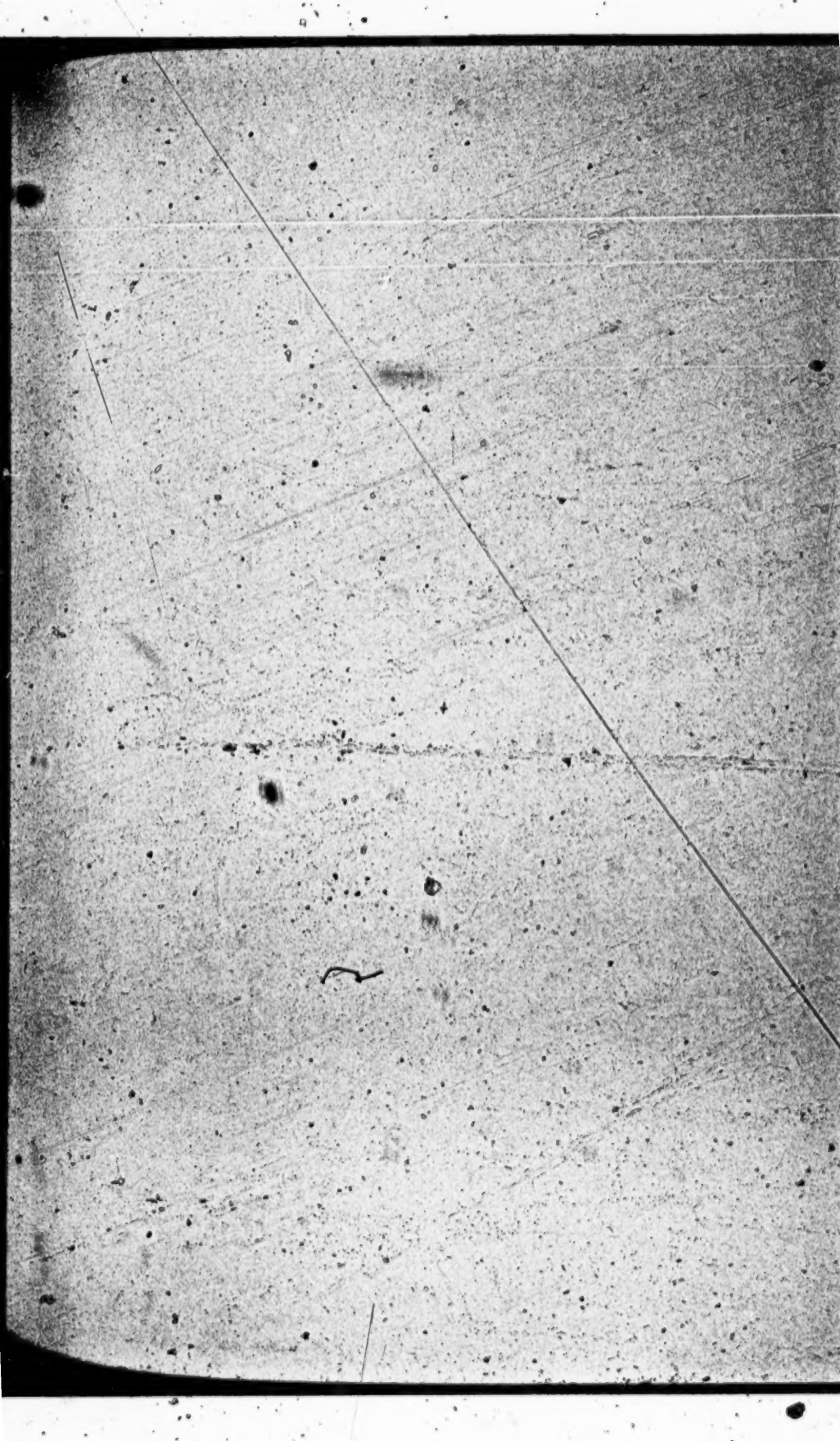
junction is in harmony with present legitimate tendencies in the business of producing and selling meat, groceries and other articles of food. In all branches of such activities there is strong and active competition. The use by defendants of their employees and facilities for the sale and distribution of groceries as well as meat would not give them any undue advantage over their competitors. Under present conditions the relief granted below would not enable them to inflict the evils of monopoly upon any part of the food industry. The denial of that relief makes against competition intended to be preserved by the Sherman Act. Defendants should be permitted more efficiently to use their help and equipment to lessen their operating expenses. That makes for lower prices and so is in the public interest.

The wholesale grocers, represented here by objecting intervenors, are not entitled to the court's protection against the competition of non-members or of defendants carrying on separately and competing actively. They may not avoid the burden of sustaining themselves in a free and open market by protestation of fear that, if allowed to engage in the grocery business at all, defendants will unfairly compete in violation of the federal anti-trust laws. If and whenever shown necessary for the protection of the commerce safeguarded by the original decree, the Government may have the modified provisions restored or new ones added.

There is nothing in the original complaint that makes for reversal here. The Government's allegations were denied by answer. The decree was entered without evidence or findings pursuant to a written stipulation between the Government and the defendants expressly providing that "this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States." And that provision was in exact words incorporated in and made a part of the decree. Thus the Government consented to, and the court adopted, this provision quite as much as the defendants consented to the other parts of the decree.

The fact that defendants thereafter applied to have the decree vacated upon grounds directed only to the power of the court to enter it ought not to be regarded as militating against them or

their good faith—particularly when it is recalled that this court, when reviewing that proceeding, deemed the questions presented of sufficient importance to call for their argument a second time. 276 U. S. 311.

I am of opinion that the facts found, taken with those conceded or established by uncontradicted evidence, justly entitle appellees to the measure of relief given below, and that the modifying decree should be affirmed.

I am authorized to say that Mr. Justice VAN DEVANTER concurs in this opinion.